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ABSTRACT

The handbook outlines Texas State Board of Education (SBOE) rules regarding the education of handicapped students. A chart format is used to present applicable Federal regulations, state law, and SBOE rules. The following topics are among those considered under clarifications of definitions in federal regulations and state law: handicapped students; intermediate educational units; qualifications of special education personnel; professional support personnel; related services personnel; paraprofessional personnel; related services; participation in regular educational programs; use of Federal funds; age ranges for student eligibility; Admission, Review, and Dismissal (ARD) Committee; parent participation in ARD meetings; content of the individual educational plan; surrogate parents; child identification; and comprehensive individual assessment. Funding topics are also examined, including basic and supplemental allocations, early childhood intervention, and regional education service centers. (CL)

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(Including Federal Regulations and State Law)

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Education of the Handicapped Regulations
ASSISTANCE TO STATES
FOR EDUCATION OF HANDICAPPED CHILDREN
(34 Code of Federal Regulations Part 300)

Subpart A--General

PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS

Federal

Reg. 300.1 Purpose.

The purpose of this part is:

(a) To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs,

(b) To insure that the rights of handicapped children and their parents are protected,

(c) To assist states and localities to provide for the education of all handicapped children, and

(d) To assess and insure the effectiveness of efforts to educate those children.

(20 U.S.C. 1401 Note)

State

"The purpose of the Foundation School Program set forth in this chapter is to guarantee that each school district in the state has adequate resources to provide each eligible student a basic instructional program suitable to his educational needs." (Texas Education Code §16.002)

"(a) The commissioner of education, with the approval of the State Board of Education, shall develop, and modify as necessary, a statewide design for the delivery of services to handicapped children in Texas which includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all handicapped children between the ages of three and 21 by no later than September 1, 1980." (Texas Education Code Section 16.104(a))

"(n) The legislature by the addition of this and the following subsections to this Section 11.10, Texas Education Code, intends to continue a process of providing better education available to deaf children on a statewide basis in Texas, and to afford all deaf children an opportunity for achievement more equal to their peers with normal hearing." (Texas Education Code Section 11.10(n))

"(a) The Central Education Agency shall develop and administer a comprehensive statewide plan for the education of visually handicapped children under 21 years of age which will ensure that the children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision." (Texas Education Code Section 11.052(a))

Federal

Reg. 300.2 Applicability to State, Local, and Private Agencies.

(a) States. This part applies to each State which receives payments under Part B of the Education of the Handicapped Act.

(b) Public agencies within the State. The annual program plan is submitted by the state educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include:

(1) the State educational agency,

(2) local educational agencies and intermediate educational units,

(3) other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf or blind), and

State

"(a) This code shall apply to all educational institutions supported either wholly or in part by state tax funds unless specifically excluded.

(b) This code shall not apply to those facilities and institutions under the control and direction of the Texas Department of Mental Health and Mental Retardation or to the institutions for delinquent, dependent and neglected children under the control and direction of the Texas Youth Council except as specifically provided in Subchapter E of Chapter 30 of this code and in Section 16.104 of this code.

Title 19, Part II
Texas Administrative Code and Statutory Citations

Adaptations for Special Populations

Chapter 89
Subchapter G

SUBCHAPTER G. SPECIAL EDUCATION

Authority: The provisions of this Subchapter G issued under Acts 1969, 61st Leg., p. 2735, ch.889, effective September 1, 1969, as amended (Texas Education Code §§16.005 and 16.104), unless otherwise noted.

(4) state correctional facilities.

(c) Private schools and facilities. Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency.

(See Regs. 300.400-300.403)
(20 U.S.C. 1412(1), (6); 1413(a); 1413(a)(4)(B))

Comment. The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

(c) Any educational institution supported either wholly or in part by state tax funds shall, if undertaking to provide educational services to any individual within the jurisdiction or geographical boundaries of the educational institution, provide equal educational opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to the provisions of this code and pursuant to the provisions of regulations promulgated by the Central Education Agency to give effect to the intent of the legislature in its enactment of this code. No individual otherwise eligible for educational services through an educational institution supported either wholly or in part by state tax funds may deny services to any handicapped student as defined in Section 16.104 of this code, but the educational institution shall instead be obligated to provide handicapped individuals such special educational services as might from time to time be authorized by law or, where expressly authorized, to assist in and contribute toward the provision of appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments." (Texas Education Code Section 1.04(a)(b)(c))

GENERAL PROVISIONS

§89.201 Scope and Applicability.

(a) Special education services shall be provided to eligible students in accordance with applicable federal law and regulations, state statutes, and the rules in this subchapter. Whenever the commissioner determines that, due to unusual circumstances in some local situation, strict compliance with one or more of the rules contained in this subchapter would result in a violation of federal or state law, the commissioner may waive the applicability of these rules in that specific circumstance.

(b) In accordance with Texas Education Code §16.104(a), the commissioner of education shall cooperate with the Texas Department of Mental Health/Mental Retardation (TDMHMR) and the Texas Youth Council (TYC) to ensure state compliance with federal law and regulations for all state-administered programs involving the delivery of special education services to handicapped students. Facilities, institutions, and community centers under the direction and control of TDMHMR and TYC shall be monitored by the Texas Education Agency for compliance with federal law and regulations, state law and the rules in this subchapter.

(c) The Texas School for the Blind, the Texas School for the Deaf, and schools within the Texas Department of Corrections shall comply with state and federal law and regulations involving the delivery of special education services to handicapped students and shall be monitored by the Texas Education Agency in accordance with the rules in this subchapter.

(d) The commissioner of education shall establish an interagency advisory group of representatives from other agencies who provide services to handicapped students.

§89.202 Planning and Evaluation for School Districts and Cooperatives.

(a) Accreditation planning and evaluation.

(1) Elements of special education shall be incorporated into the accreditation planning process, which includes goal setting, conducting a self-study, and developing a five year priorities plan following the procedures in the Principles, Standards, and Procedures for the Accreditation of Schools. The plan shall clearly reflect special education students' participation in the activities of the five year priorities plan.

(2) Each school district shall evaluate the effectiveness of the special education students' participation in activities of the five year priorities plan as part of the accreditation annual evaluation which is due on or before August 1 of the school year.

(b) Special education planning and evaluation.

(1) Each school district or special education cooperative shall conduct an annual evaluation of its special education program to identify needs and program priorities.

(2) A one-year plan for the delivery of services to handicapped students shall be developed. The plan shall state annual goals, objectives, and activities to meet the identified needs and to implement the special education program for the next school year.

(3) The plan shall be submitted to the agency on or before August 1 each year.

(c) Each school district or special education cooperative shall have written rules including but not limited to all matters relating to special education personnel, fiscal responsibilities, and programs.

Federal

Reg. 300.3 Regulations that Apply to Assistance to States for Education of Handicapped Children.

(a) Regulations. The following regulations apply to this program of Assistance to States for Education of Handicapped Children.

(1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 300.

(b) How to use regulations; how to apply for funds. The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in--

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

[42 FR 42476, August 23, 1977, as amended at 45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980]

DEFINITIONS

Comment. Definitions of terms that are used throughout these regulations are included in this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections and subparts in which they are defined.

Consent (Section 300.500 of Subpart E)
Destruction (Section 300.560 of Subpart E)
Direct services (Section 300.370(b)(1) of Subpart C)
Evaluation (Section 300.500 of Subpart E)
First priority children (Section 300.320(a) of Subpart C)
Independent educational evaluation (Section 300.503 of Subpart E)
Individualized education program (Section 300.340 of Subpart C)
Participating agency (Section 300.560 of Subpart E)
Personally identifiable (Section 300.500 of Subpart E)
Private school handicapped children (Section 300.450 of Subpart D)
Public expense (Section 300.503 of Subpart E)
Second priority children (Section 300.320(b) of Subpart C)
Special definition of "State" (Section 300.700 of Subpart G)
Support services (Section 300.370(b)(2) of Subpart C)

Federal

Reg. 300.4 Free Appropriate Public Education.

As used in this part, the term "free appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge,

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under Regs. 300.340-300.349 of Subpart C.

(20 U.S.C. 1401(18))

Federal

Reg. 300.5 Handicapped Children.

(a) As used in this part, the term "handicapped children" means those children evaluated in accordance with Regs. 300.530-300.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) "Hard of Hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) "Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

State

"(c) The commissioner, with the approval of the State Board of Education shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. . . . The following classifications of handicapped students shall serve as the general eligibility criteria for participation in a district's special education program:

(1) "Handicapped students" means students between the ages of three and 21, inclusive;

(A) with educational handicaps (physically handicapped, auditorially handicapped, visually handicapped, mentally retarded, emotionally disturbed, learning disabled, speech handicapped, autistic, or multiply handicapped); and children leaving and not attending public school for a time because of pregnancy; and

(B) whose disabilities are so limiting as to require the provision of special services in place of or in addition to instruction in the regular classroom.

(2) "Physically handicapped students" means students whose hearing is so impaired from any cause that they cannot be adequately or safely educated in the regular classes of the public schools without the provision of special services.

(3) "Auditorially handicapped students" means students whose hearing is so impaired that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(4) "Visually handicapped students" means students whose sight is so impaired that they cannot be adequately or safely educated in the regular classes of the public schools without the provision of special services.

CLARIFICATION OF PROVISIONS
IN FEDERAL REGULATIONS AND STATE LAW

§89.211 Handicapped Students.

(a) To be eligible to receive special education services a student must have been determined to have one or more of the handicapping conditions listed in federal regulations or in state law or both. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Physically handicapped students shall include the following:

(1) Orthopedically handicapped student. A student who has been determined by a licensed physician to have a severe orthopedic impairment.

(2) Other health impaired student. A student who has been determined by a licensed physician to have limited strength, vitality or alertness, due to chronic or acute health problems.

(c) Auditorially handicapped student. One who has been determined to have a serious hearing loss even after corrective medical treatment or use of amplification. This determination shall have been made by an otological examination performed by an otologist or a licensed medical doctor with documentation that an otologist is not reasonably available. An audiological evaluation by a certified audiologist shall also be conducted. This evaluation shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) "Other health impaired" means:

(i) having an autistic condition which is manifested by severe communication and other developmental and educational problems; or

(ii) having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(A) an inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) inappropriate types of behavior or feelings under normal circumstances;

(D) a general pervasive mood of unhappiness or depression; or

(E) a tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(5) "Mentally retarded students" means students with significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior and manifested during the developmental period such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(6) "Emotionally disturbed students" means students whose emotional condition is psychologically or psychiatrically determined to be such that they cannot be adequately and safely educated in the regular classes of the public schools without the provision of special services.

(7) "Learning disabled students" means students:

(A) who demonstrate a significant discrepancy between academic achievement and intellectual abilities in one or more of the areas of oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, mathematics reasoning, or spelling;

(B) for whom it is determined that the discrepancy is not primarily the result of visual handicap, hearing impairment, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage; and

(C) for whom the inherent disability exists to a degree such that they cannot be adequately served in the regular classes of the public schools without the provision of special services.

(8) "Speech handicapped students" means students whose speech is so impaired that they cannot be adequately educated in regular classes of the public schools without the provision of special services.

(9) "Autistic students" means students whose disturbances of speech and language, relatedness, perception, developmental rate, and motility are such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(10) "Multiply handicapped students" means students handicapped by any two or more of the handicapping conditions described in Subdivisions (2) through (9) of this subsection that may result in multisensory or motor deficiencies and developmental lags in the cognitive, affective, or psychomotor areas such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services." (Texas Education Code Section 16.104(c))

(d) Visually handicapped student. A student who has been determined by a licensed ophthalmologist or optometrist to have no vision or to have a serious visual loss after correction. The visual loss should be stated in exact measures of visual field and corrected visual acuity at distance and near in each eye. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and give best estimates. For students having residual vision, a functional vision evaluation shall be performed. Functional vision shall be evaluated by a professional certified in the education of the visually handicapped or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision.

(e) Deaf-blind student. A student who has a combination of severe hearing and visual losses after best correction and is determined to be eligible as auditorially handicapped and as visually handicapped according to the specific eligiblity criteria for each of these handicapping conditions. If an eligible visually handicapped student has a suspected hearing loss that cannot be demonstrated conclusively and if a speech/language evaluation performed by a certified speech therapist indicates there is no speech at an age when speech would normally be expected, the student may be eligible for services as deaf-blind.

(f) Mentally retarded student. A student who has been determined by a licensed or certified psychologist, a psychological associate, or an educational diagnostician to be functioning two or more standard deviations below the mean on individually administered scales of verbal ability, performance or nonverbal ability, existing concurrently with deficits in adaptive behavior. The report of individual assessment must specify the degree of mental retardation. If mental retardation is suspected, assessment instruments must be selected from the list of instruments approved by the State Board of Education.

(g) Emotionally disturbed student.

(1) A student who has been evaluated by a licensed or certified psychologist or psychiatrist, or by a psychological associate under the direct supervision of a licensed or certified psychologist, and determined to be seriously emotionally disturbed, as defined in federal regulations and state law. The evaluation shall also include specific recommendations for behavioral management in the educational setting.

(2) The commissioner of education and the commissioner for mental health and mental retardation shall jointly develop, field test, and approve a set of classifications for type and severity of emotional disturbance based on selected criteria from the Diagnostic and Statistical Manual-III of the American Psychiatric Association (DSM-III). During this same period the commissioner will engage in other pilot testing activities to see if other appropriate behaviorally defined emotionally disturbed eligibility could be developed.

(10) "Speech impaired" means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

[42 FR 42476, August 23, 1977, as amended at 42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980, and further amended at 46 FR 3866, January 16, 1981.]

(3) Until the document described in paragraph (2) of this subsection has been approved, the following existing provisions concerning emotionally disturbed students shall apply:

(A) A student who is emotionally disturbed is one who has been evaluated by a licensed or certified psychologist, a psychiatrist, or a psychological associate under the direct supervision of a licensed or certified psychologist who determines that the student meets the criteria as defined in 34 Code of Federal Regulations 300.5(b)(8) (relating to Handicapped Children).

(B) The report of individual assessment from the evaluating professional must specify:

(i) the type and severity of the emotional disturbance;

(ii) the functional implications of the disability for situations involving instruction;

(iii) the degree to which in-school and out-of-school behavior reflects symptoms consistent with the diagnosis and identification of behavior considered to be a direct result of the emotional handicap; and

(iv) recommendations for behavioral management in the educational setting.

(h) Learning disabled student. Specific eligibility criteria for learning disabled students are defined in §89.234 of this title (relating to Learning Disabled Students: Criteria for Determining the Existence of a Severe Discrepancy Between Achievement and Intellectual Ability).

(i) Speech handicapped student. A student who has been determined by a certified speech and hearing therapist to have a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment.

(j) Autistic student. A student who evidences the criteria for autism and other pervasive developmental disorders as determined by a multidisciplinary team using the definition as stated in the third edition of The Diagnostic and Statistical Manual (DSM-III).

(1) The multidisciplinary team must include:

(A) a licensed physician, psychiatrist, or psychologist with experience or training in the diagnosis of autism;

(B) a certified speech therapist; and

(C) an educational diagnostician or other student evaluation specialist licensed or certified to assess disturbances in the areas defined in this subsection.

(2) The team's written report of evaluation shall include specific recommendations for behavior management and family counseling.

(k) Multiply handicapped student.

(1) A student who has a combination of handicaps included in this section and who meets all of the following conditions:

(A) the student's handicapping condition is expected to continue indefinitely;

(B) the student's disabilities require comprehensive instruction and related services in programs for the severely handicapped; and

(C) the disabilities severely impair performance in all of the following areas:

(i) psychomotor skills;

(ii) self-care skills;

(iii) communication;

(iv) social and emotional development; and

(v) cognition.

(2) Students who have more than one of the handicapping conditions defined in this section but who do not meet the criteria in paragraph (1) of this subsection shall not be classified or reported as multiply handicapped.

(l) Pregnant student. A student who has been determined by a licensed physician to be pregnant.

(1) When considering a pregnant student, the ARD committee shall consider a variety of instructional options that are appropriate to meet the physical, emotional and psychological needs of such student and shall include the following:

(A) regular class placement with supportive services;

(B) part-time or full-time self-contained special or community classes; and

(C) homebound.

(2) The state school compulsory attendance law shall apply to pregnant students. A pregnant student's attendance shall be rendered feasible under Section 21.032 of the Texas Education Code, unless such student holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the student's absence from school for the purpose of receiving and recuperating from such remedial treatment.

(3) In the absence of local district applicable leave policies for students with temporary disabilities, the school district shall treat pregnancy and related conditions as justification for a leave of absence for a period of time deemed medically necessary by the student's physician and shall reinstate the student to the status she held when the leave began. This is not to be considered an instructional arrangement.

		(4) Pregnancy is not listed as a handicapping condition in federal special education law or regulations; therefore, pregnant students may not be served with federal special education funds unless they meet eligibility criteria for one of the handicapping conditions which is included in the federal special education program. (m) Rules concerning early childhood intervention programs for developmentally delayed children are found in 25 TAC §§621.1-621.5 (relating to Early Childhood Intervention Program) and §89.258 of this title (relating to Early Childhood Intervention Program for Developmentally Delayed Children). Only developmentally delayed children who meet eligibility criteria for one of the handicapping conditions in subsections (a)-(k) of this section and who also meet the age-eligibility requirements in §89.220 of this title (relating to Age Ranges for Student Eligibility) are eligible for funds allocated under this subchapter.
Federal Reg. 300.6 Include. As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named. (20 U.S.C. 1417(b))		
Federal Reg. 300.7 Intermediate Educational Unit. As used in this part, the term "intermediate educational unit" means any public authority, other than a local educational agency, which: (a) is under the general supervision of a State educational agency; (b) is established by State law for the purpose of providing free public education on a regional basis; and (c) provides special education and related services to handicapped children within that State. (20 U.S.C. 1401(22))	State "(a) The State Board of Education shall provide, by rules and regulations, for the establishment and operation of Regional Education Service Centers to provide educational services to the school districts and to coordinate educational planning in the region." (Texas Education Code Section 11.32(a)) "(b) The commissioner of education, with the approval of the State Board of Education, shall develop and implement a plan for the coordination of services to handicapped children within each geographical area served by a regional education service center. The plan shall include, but may not be limited to, procedures for: (1) identifying existing public or private educational and related services for handicapped children in each region; (2) identifying and referring handicapped children who cannot be appropriately served by the school district in which they reside to other appropriate programs; (3) assisting school districts individually and cooperatively to develop programs to identify and provide appropriate services for handicapped children; (4) expanding and coordinating services provided by regional education service centers which are related to programs for handicapped children; and (5) providing for special services such as special seats, books, instructional media, and other supplemental supplies and services required for quality instruction.	§89.212 Intermediate Educational Units. (a) For the purposes of this subchapter, regional education service centers shall be considered to be intermediate educational units as defined in federal regulations. (b) Regional education service center shall provide services required from intermediate educational units in federal regulations and such other services as may be required by this subchapter or by the commissioner of education.

(c) The commissioner may allocate appropriated funds to regional education service centers and may otherwise expend those funds, as necessary, to implement the provisions of this section." (Texas Education Code Section 11.103(b)(c))

Federal

Reg. 300.8 Local Educational Agency.

(a) For the purposes of this part, the term "local educational agency" also includes intermediate educational units.

[42 FR 42476, August 23, 1977, as amended at 45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980.]

Federal

Reg. 300.9 Native Language.

As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows:

The term "native language," when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(20 U.S.C. 880b-1(a)(2); 1401(21))

Comment. Section 602(21) of the Education of the Handicapped Act states that the term "native language" has the same meaning as the definition from the Bilingual Education Act. (The term is used in the prior notice and evaluation sections under Reg. 300.505(b)(2) and Reg. 300.532(a)(1) of Subpart E.) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, braille, or oral communication).

Federal

Reg. 300.10 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with Reg. 300.514. The term does not include the State if the child is a ward of the State.

(20 U.S.C. 1415)

Comment. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

State

"The resident district has the ultimate responsibility for providing or causing the provision of appropriate services to each handicapped student . . . ." (Texas Education Code Section 16.104(n))

"(2) "Resident district" means the local school district in which the parent or other person who has the primary legal obligation for care, control, and custody of a handicapped student resides, except that if the state is managing conservator of the student, the resident district is the district within which the student is placed by the state." (Texas Education Code Section 16.104(b)(2))

	"(d) In order for a person under the age of 18 years to establish a residence for the purpose of attending the public free schools separate and apart from his parent, guardian, or other person having lawful control of him under an order of a court, it must be established that his presence in the school district is not for the primary purpose of attending the public free schools. The board of trustees shall be responsible for determining whether an applicant for admission is a resident of the school district for purposes of attending the public schools. (e) A child placed in foster care by an agency of the state or a political subdivision shall be permitted to attend the public free schools in the district in which the foster parents reside free of any charge to the foster parents or the agency. No durational residence requirement may be used to prohibit such a child from fully participating in any activity sponsored by the school district." (Texas Education Code Section 21.031(d)(e))	
Federal Reg. 300.11 Public Agency. As used in this part, the term "public agency" includes the State educational agency, local educational agencies, intermediate educational units, and any other political subdivisions of the State which are responsible for providing education to handicapped children. (20 U.S.C. 1412(2)(B); 1412(6); (1413(a))		
Federal Reg. 300.12 Qualified. As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.	State "(e) Professional personnel for the operation and maintenance of a program of special education shall be: (1) handicapped students' teachers, including itinerant teachers whose duties may or may not be performed in whole or in part on the campus of a school; (2) special education related service personnel, including occupational therapists, physical therapists, nurses, orientation and mobility instructors, and other noneducational personnel who are otherwise professionally licensed by state or national certification recognized by the commissioner of education; and (3) special education support personnel, including special education directors, special education supervisors, special education counselors, special education visiting teachers, psychologists, educational diagnosticians, and other pupil evaluation specialists. (f) Paraprofessional personnel for the operation and maintenance of a program of special education shall consist of persons engaged as teacher aides, who may or may not hold a teacher certificate. (g) Certification standards for professional and paraprofessional personnel authorized in Subsections (e) and (f) of this section shall be developed by the commissioner, approved by the State Board of Education, and reviewed periodically. The standards shall be independent of certification or endorsement in other fields and shall include requirements for additional training and recertification as necessary." (Texas Education Code Section 16.104(e)(f)(g))	§89.213 Qualifications of Special Education Personnel. (a) All special education personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with provisions in Chapter 141 of this title (relating to Teacher Certification). If a staff member does not have the skills and knowledge needed for the assignment, the district shall make provisions for the person to acquire the necessary skills and knowledge. (b) School districts may employ special education personnel on a full-time or part-time basis. (c) Persons paid from special education funds shall be assigned to instructional or other duties only in the special program; however, such assignments may include duties supportive to school operations equivalent to those assigned to regular education teachers. (d) Teachers who hold a special education certificate, an academic teaching field or specialization, or endorsement may be assigned to any level of a basic special education instructional program serving students between the ages of three and 21, except for the following: (1) Teachers assigned to provide speech therapy instructional services must hold a certificate in speech and hearing therapy. (See §89.215 of this title (relating to Related Services Personnel) subsection (b)(15) for related service assignment.)

(2) Teachers holding only a special education endorsement for early childhood education for handicapped children shall be assigned only to programs serving three-, four-, five-, and six-year-old students.

(3) Teachers assigned full time to a program for pregnant students must hold a valid Texas teaching certificate and there must be documentation in the teacher's personnel file that the teacher has the necessary skills and knowledge to teach prenatal care, infant and child development, child health and emergency care, discipline and other parenting skills, including prevention of child abuse. Such documentation may include, but need not be limited to, inservice records, evidence of seminar attendance, or transcripts of college courses.

(4) Teachers assigned full time to teaching students who are orthopedically handicapped or other health impaired with the teaching station in the home or a hospital shall not be required to hold a special education certificate or endorsement as long as the personnel file contains an official transcript indicating that the teacher has completed a three-semester-hour survey course in the education of the handicapped and three semester hours directly related to teaching physically handicapped children.

(5) Teachers certified in deficient vision shall be available to students who are visually handicapped through one of the school district's instructional options or through a cooperative arrangement with other school districts or an education service center.

(6) Teachers certified in deaf or hard of hearing shall be available to students who are deaf or hard of hearing through one of the Regional Day School Programs for the Deaf or through a cooperative arrangement with other school districts or a regional education service center.

(7) Physical education for the handicapped.

(A) When the ARD committee has made the recommendation and the arrangements are specified in the student's IEP, physical education for the handicapped may be provided by the following personnel:

(i) special education instructional or related service personnel who have the necessary skills and knowledge;

(ii) physical education teachers;

(iii) occupational therapists;

(iv) physical therapists; or

(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(8) Teachers assigned full time or part time to instruction of visually handicapped students from birth through age two shall be certified in either early childhood education for the handicapped or education for the visually handicapped. Teachers assigned full time or part time to instruction of deaf students from birth through age two shall be certified in education for the deaf. Others shall require prior approval from the Texas Education Agency.

§89.214 Special Education Professional Support Personnel.

(a) Functions performed. Special education professional support personnel are those non-instructional personnel who perform one of the following functions:

(1) render services to the special education program in support of the instructional program, related services program, and student evaluation services;

(2) provide related services or student evaluation services to eligible handicapped students; or

(3) direct or supervise the total program.

(b) Services available. Each special education teacher shall have available the services of a special education instructional supervisor and an educational diagnostician. The special education director may also serve as the special education instructional supervisor if appropriately certified.

(c) Special education director. The special education director shall perform administrative and managerial duties as needed to fully implement a comprehensive special education program. The director shall assume responsibility for coordinating all facets of the special education program, including referrals of special education students to and from other agencies, in order to allow a smooth transition from one service to another.

(d) Special education supervisor. The special education supervisor shall provide leadership in the instructional program, and may be responsible for coordination of the appraisal process.

(e) Special education counselor. The special education counselor shall provide student and parent counseling, individually and in groups, concerning problems resulting from the student's handicapping condition. The special education counselor shall serve as liaison between parent, school, and community agencies. The counselor may assist in the collection and analysis of appraisal data pertaining to sociological variables. The counselor shall coordinate special education counseling with the rest of the school guidance program.

(f) Special education visiting teacher. The special education visiting teacher shall provide liaison between the school, home, and community. The special education visiting teacher may also assist in the collection and analysis of appraisal data pertaining to sociological variables.

(g) School psychologist. The primary function of the school psychologist is to serve on the assessment team. The responsibilities of the school psychologist may include conducting comprehensive assessments of students referred for special education placement; participating in the development of individual educational plans; consulting with teachers, parents and community agencies concerning prevention or intervention strategies relating to learning and behavioral problems of students; and planning and managing a program of psychological services for students and parents.

(h) Associate school psychologist.

(1) The primary function of the associate school psychologist is to serve on the assessment team.

(2) The responsibilities of the associate school psychologist may include any of the activities described for the school psychologist in subsection (g) of this section, except that the associate school psychologist must be directly supervised by a licensed or certified psychologist when conducting comprehensive assessments of emotional/behavioral factors which may lead to the classification of emotional disturbance.

(i) Educational diagnostician. The educational diagnostician shall be responsible for the assessment of intelligence and of educational functioning and for the collection and analysis of data pertaining to sociological variables for the student. Educational diagnosticians may provide consultation to teachers, parents, other support personnel, and community agencies including but not limited to consultation concerning individual educational plan implementation and strategies for learning.

§89.215 Related Services Personnel.

(a) The primary function of related services personnel is to implement services for the handicapped student as identified in the student's individual educational plan. In the case of physical therapy and corrective therapy, services for students shall be prescribed by a physician. Related services personnel may also perform the following functions:

(1) perform assessments in areas for which they have appropriate training;

(2) provide assistance to the ARD committee;

(3) contribute to the development of the IEP; and

(4) provide consultation to teachers, aides, and parents concerning IEP implementation, maintenance, and evaluation.

(b) Related services personnel shall meet the following certification or licensure requirements:

(1) Art therapy shall be provided by a professional who holds registration by the American Art Therapy Association.

(2) Audiological services shall be provided by a professional who holds certification as an audiologist by the American Speech-Language-Hearing Association.

(3) Corrective therapy services shall be provided by a professional who holds the following:

(A) a valid Texas teaching certificate with an academic specialization in physical education;

(B) institutional verification of a minimum of 400 hours of clinical experience in working with handicapped individuals; and

(C) certification issued by the American Board for Certified Corrective Therapy.

(4) Counseling services shall be provided in the area of specialization by a professional who holds one of the following:

(A) a valid Texas Education Agency certificate, as a counselor, visiting teacher, school psychologist, or associate psychologist;

(B) certification by the Texas State Board of Examiners of Psychologists as a psychologist or psychological associate;

(C) licensure by the State Board of Examiners of Professional Counselors; or

(D) a master's degree in social work from a recognized institution of higher education.

(5) Interpreting services for the deaf shall be provided by an interpreter who is certified by the Registry of Interpreters for the Deaf, Texas Society of Interpreters for the Deaf or Texas Commission for the Deaf, or who has a letter of approval from the appropriate regional director of services for the deaf.

(6) Medical diagnostic services shall be provided by a licensed physician.

(7) Music therapy shall be provided by a professional who is registered by the National Association for Music Therapy.

(8) Occupational therapy shall be provided by a professional who is licensed by the Texas Board of Occupational Therapy Examiners. A licensed occupational therapy assistant may provide occupational therapy services under the supervision of a licensed occupational therapist in accordance with the standards of the profession.

(9) Orientation and mobility instruction shall be provided by a professional who holds at least a bachelor's degree with a major in the field of orientation and mobility instruction and who is certified by the American Association of Workers for the Blind.

(10) Physical therapy shall be provided by a professional who holds a licensure by the Texas Board of Physical Therapy Examiners. A physical therapy assistant (LPTA) may provide physical therapy services under the supervision of a licensed physical therapist (LPT) in accordance with the standards of the profession.

(11) Psychological services shall be provided by a professional who holds a certificate from the Texas State Board of Examiners of Psychologists as a psychologist or psychological associate or a Texas Education Agency certificate as a school psychologist or an associate school psychologist.

(12) Recreation therapy shall be provided by a professional who holds a degree in therapeutic recreation and is certified by the National Council on Therapeutic Recreation Certification.

(13) School health services shall be provided or supervised by a licensed physician or by a registered nurse (RN) with or without a bachelor's degree.

(14) Social work services shall be provided by one of the following:

(A) a professional who holds a master's degree in social work from a recognized institution of higher learning;

(B) a professional who holds a bachelor's degree in an appropriate field from a recognized institution of higher learning and who is supervised by a social worker with a master's degree (MSSW);

(C) a professional counselor licensed by the State Board of Examiners of Professional Counselors; or

(D) a Texas Education Agency certified school psychologist, associate school psychologist, visiting teacher, or counselor.

(15) Speech therapy, as a related service only, shall be provided by a professional who holds one of the following:

(A) a valid Texas Education Agency certificate as a speech and hearing therapist; or

(B) a certificate of Clinical Competence in Speech - Language Pathology from the American Speech - Language - Hearing Association.

(16) Visual training therapy shall be provided by a professional who is a Texas licensed eye specialist with special professional preparation in visual training.

(c) Other related services may be provided with the written approval by the Texas Education Agency.

§89.216 Special Education Paraprofessional Personnel.

(a) Paraprofessional personnel may be assigned to work with eligible handicapped students, special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation. An aide may be assigned to the Special Education Resource System (SERS). An aide may be assigned to the Special Education Management System (SEMS).

(b) An additional aide II shall be allocated to special education cooperative programs to assist with administrative duties of the cooperative.

(c) Aides are certified by the Texas Education Agency on levels I, II,

and III. In assigning special education paraprofessional personnel, the school district shall follow the requirements concerning assignment of educational aides and educational secretaries in §141.370 of this title (relating to Role Descriptions). Aides shall be placed in the Texas Public Education Compensation Plan on the pay grade appropriate to the aide's assignment; however; aides may not be placed on a pay grade higher than the one for which their certification level qualifies them.

(d) Licensed occupational therapy assistants, licensed physical therapy assistants, and interpreters for the deaf may be employed as aides I, II, or III, depending on the nature of the assignment.

(e) An aide may be assigned to function as a teacher assistant under the following conditions:

(1) Qualifications shall include all of the following:

(A) high school graduate or equivalent;

(B) thirty semester hours of college credit with some emphasis on child growth and development or related areas; or a minimum of three years experience working directly with children or youth, as appropriate, in instructional or child care facilities; and

(C) documented on-going inservice or other staff development activities related to the education of the handicapped.

(2) Supervision shall be by a certified special education teacher who is directly responsible for the implementation of the students' IEP's and evaluation of their progress, for a minimum of one hour per day or five hours per week.

(3) Assignment shall be in one of the following:

(A) community class;

(B) hospital class;

(C) home-based instruction;

(D) residential unit;

(E) sheltered workshop; or

(F) self-contained class.

Federal

Reg. 300.13 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

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State

"(B) "related services," which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the proper development and implementation of a handicapped student's individualized educational plan, including but not limited to special transportation, school health services, counseling with students or families, psychological services, audiological services, visual training, medical or psychiatric diagnostic services, occupational therapy, physical therapy, recreational therapy, social work services, parent counseling and training, adaptive equipment, special seating, orientation and mobility training, speech therapy, music therapy, and corrective therapy." (Texas Education Code Section 16.104(b)(1)(B))

§89.217 Related Services.

(a) The ARD committee shall include provisions for related services in a student's individual educational plan when the related service is necessary to enable the student to benefit educationally from:

(1) special education instruction provided by special education personnel; or

(2) a regular education program that has been modified through the use of special education support services, supplementary aids, or other special arrangements.

(b) In addition to those related services authorized in federal regulations, the following related services may be provided:

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(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conversation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical serivces" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(5) "Occupational therapy" includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" include:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(1) Adaptive equipment.

(A) Adaptive equipment is any type of device or aid used to adapt conditions to improve the student's functioning after all necessary medical treatments and surgery have been performed, and prostheses have been made. The adaptive equipment must facilitate the achievement of specific objectives of the individual educational plan.

(B) Special seats are any type of special chair or seating equipment which will enhance the learning situation and enable an eligible student to participate as fully as possible in classroom activities.

(C) Electronic communication equipment is any type of electronic communication system, telephone, or video setup which enables a homebound student to receive instruction along with classmates or to participate in class discussions or both.

(2) Art therapy. Art therapy is the use of various art forms in the amelioration of educationally handicapping disabilities.

(3) Corrective therapy. Corrective therapy is the application of the principles, tools, techniques, and psychology of medically oriented physical education to assist the physician in the accomplishment of prescribed objectives.

(4) Music therapy. Music therapy is the use of music learning experiences specifically designed to modify inappropriate behavior patterns and ineffective learning patterns.

(5) Orientation and mobility training. Orientation and mobility training includes those aids, methods, services, and skills which enable visually handicapped individuals to move from one place to another with confidence, safety, and purpose. "Mobility" in this context is the act of moving, while "orientation" is that awareness of pertinent factors in the environment which enables the person with partial or total visual impairment to react, move, and travel in an appropriate, safe, and purposeful manner.

(6) School health services. School health services as a related service are those provided to eligible handicapped students in addition to those routinely available to all students and may include the following:

(A) screening and referral for health needs;

(B) monitoring medication needed by students during school hours;

(C) consultation with physicians, parents, and staff regarding effects of medication, and emergency care training for staff and parents; and

(D) counseling with handicapped students and their families concerning health care practices and services.

(7) Visual therapy. Visual therapy includes training in the use of low vision and visual perception.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "School health services" means services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:

(i) Preparing a social or developmental history on a handicapped child;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:

(i) Identification of children with speech or language disorders;

(ii) Diagnosis and appraisal of specific speech or language disorders;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(13) "Transportation" includes:

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.

(8) Recreation therapy. Recreation therapy is a process which uses recreation services for purposeful intervention in some physical, emotional, or social behavior to bring about a desired change in that behavior and to promote the growth and development of the individual.

(c) Transportation.

(1) Special transporation shall be provided for eligible students in accordance with §85.172 of this title (relating to Handicapped Student Eligibility), and §85.202 of this title (relating to Transportation for Handicapped Students). School districts shall receive funding for special education transportation as provided in §105.137 of this title (relating to Transportation for Handicapped Students).

(2) For students placed in a residential setting based upon local school district ARD committee recommendations, including those students placed in the Texas School for the Blind and the Texas School for the Deaf, the school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students are expected to leave the residential campus. School districts are not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed state approved per diem and mileage rates unless excess charges can be justified and documented. Transportation shall be arranged using the most cost efficient means. Where it is necessary for the safety of the child as determined by the ARD committee for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided. The school district and the residential facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

Comment. With respect to related services, the Senate Report states:

The Committee bill provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(Senate Report No. 94-168, p. 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a handicapped child to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

Federal

Reg. 300.14 Special education.

(a)(1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

State

"(1) "Special services" means:

(A) "special teaching," which may be provided by professional and paraprofessional personnel in the following instructional settings:

(i) resource room;

(ii) self-contained classroom, regular or special campus;

(iii) hospital or community class;

(iv) homebound or bedside;

(v) speech or hearing therapy class;" (Texas Education Code §16.104(b)(1))

"(a) Each school district that offers kindergarten through grade 12 shall offer a well-balanced curriculum . . . ." (Texas Education Code Section 21.101(a))

"(d) Local instructional plans may draw upon state curriculum frameworks and program standards as appropriate. The responsibility for enabling all children to participate actively in a balanced curriculum which is designed to meet individual needs rests with the local school district . . . ." (Texas Education Code Section 21.101(d))

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adapted physical education, movement education, and motor development.

(20 U.S.C. 1401(16))

(3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(20 U.S.C. 1401(16))

Comment. (1) The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in section 300.5.) The definition of "related services" (section 300.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act.

(2) The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Pub. L. 94-482. Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.

(2) Transportation. If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(Public Law 93-112 and Public Law 93-516 Section 504 of the Rehabilitation Act of 1973)

Statutory Citations

Federal

Reg. 300.110 Condition of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Secretary through its State educational agency.

(20 U.S.C. 1232c(b), 1412, 1413)

State

"The commissioner of education with the approval of the State Board of Education, shall develop . . . a statewide design . . . to . . .

(1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to handicapped students as defined in this section;" (Texas Education Code Section 16.104(a)(1))

Statutory Citations

Federal

Reg. 300.111 Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

(20 U.S.C. 1412, 1413, 1232c(b))

Statutory Citations

Federal

Reg. 300.121 Right to a free appropriate public education.

(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under Reg. 300.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.

(c) The information must show that the policy:

(1) Applies to all public agencies in the State;

(2) Applies to all handicapped children;

(3) Implements the priorities established under Reg. 300.127(a)(1) of this subpart; and

(4) Establishes timeliness for implementing the policy, in accordance with Reg. 300.122.

(20 U.S.C. 1412(1), (2)(B), (6); 1413(a)(3))

Statutory Citations

Federal

Reg. 300.122 Timeliness and ages for free appropriate public education.

(a) General. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) Documents relating to timeliness. Each annual program plan must include a copy of each statute, court order, attorney general decision, and other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this section.

(c) Exception. The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) Documents relating to exceptions. Each annual program plan must:

(1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and

(2) Include a copy of each State law, court order, and other document which provides a basis for the exception.

(20 U.S.C. 1412(2)(B))

Statutory Citations

Federal

Reg. 300.123 Full educational opportunity goal.

Each annual program plan must include in detail the policies and procedures which the State will undertake, or has undertaken, in order to insure that the State has a goal of providing full educational opportunity to all handicapped children aged birth through twenty-one.

(20 U.S.C. 1412(2)(A))

Statutory Citations

Federal

Reg. 300.124 Full educational opportunity goal--data requirement.

Beginning with school year 1978-1979, each annual program plan must contain the following information:

(a) The estimated number of handicapped children who need special education and related services.

(b) For the current school year:

(1) The number of handicapped children aged birth through two, who are receiving special education and related services; and

(2) The number of handicapped children:

(i) Who are receiving a free appropriate public education,

(ii) Who need, but are not receiving a free appropriate public education,

(iii) Who are enrolled in public and private institutions and are receiving a free appropriate public education, and

(iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.

(c) The estimated numbers of handicapped children who are expected to receive special education and related services during the next school year.

(d) A description of the basis used to determine the data required under this section.

(e) The data required by paragraphs (a), (b), and (c) of this section must be provided:

(1) For each disability category (except for children aged birth through two), and

(2) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A))

Comment. In Part B of the Act, the term "disability" is used interchangeably with "handicapping condition." For consistency in this regulation, a child with a "disability" means a child with one of the impairments listed in the definition of "handicapped children" in Reg. 300.5, if the child needs special education because of the impairment. In essence, there is a continuum of impairments. When an impairment is of such a nature that the child needs special education, it is referred to as a disability, in these regulations, and the child is a "handicapped" child.

States should note that data required under this section are not to be transmitted to the Secretary in personally identifiable form. Generally, except for such purposes as monitoring and auditing, neither the States nor the Federal Government should have to collect data under this part in personally identifiable form.

Statutory Citations

Federal

Reg. 300.125 Full educational opportunity goal--timetable.

(a) General requirement. Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children.

(b) Content of timetable. (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.

(2) The data required under this paragraph must be provided:

(i) For each disability category (except for children aged birth through two), and

(ii) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A))

Statutory Citations

Federal

Reg. 300.126 Full educational opportunity goal--facilities, personnel, and services.

(a) General requirement. Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement.

(b) Statistical description. Each annual program plan must include the following data:

(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and the number of each of these who are currently employed in the State.

(2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, therapeutic recreation specialists, diagnostic personnel, supervisors, and other instructional and non-instructional staff.

(3) The total number of personnel reported under paragraph (b)(1) and (2) of this section, and the salary costs of those personnel.

(4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) Data categories. The data required under paragraph (b) of this section must be provided as follows:

(1) Estimates for serving all handicapped children who require special education and related services,

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G), and

(3) Estimates for the next school year.

(d) Rationale. Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.

(20 U.S.C. 1412(2)(A))

Statutory Citations

Federal

Reg. 300.127 Priorities.

(a) General requirement. Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under Regs. 300.320-300.324 of Subpart C.

(2) The State priorities meet the timelines under Reg. 300.122 of this subpart, and

(3) The State has made progress in meeting those timelines.

(b) Child data. (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in Reg. 300.321 of Subpart C:

(i) By disability category, and

(ii) By the age ranges in Reg. 300.124(e)(2) of this subpart.

(c) Activities and resources. Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being carried out in the State,

(2) The Federal, State, and local resources that have been committed during the current school year, and

(3) The programs, services, activities, and resources that are to be provided during the next school year.

(20 U.S.C. 1412(3))

Statutory Citations

Federal

Reg. 300.128 Identification, location, and evaluation of handicapped children.

(a) General requirement. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that:

(1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) Information. Each annual program plan must:

(1) Designate the State agency (if other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The activities described in paragraph (a) of this section have been achieved under the current annual program plan, and

(ii) The resources named for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to insure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located, and evaluated, and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(20 U.S.C. 1412(2)(C))

Comment. The State is responsible for insuring that all handicapped children are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements in Regs. 300.560-300.576.

Statutory Citations

Federal

Reg. 300.129 Confidentiality of personally identifiable information.

(a) Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Secretary shall use the criteria in Regs. 300.560-300.576 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. The confidentiality regulations were published in the Federal Register in final form on February 27, 1976 (41 FR 8603-8610), and met the requirements of Part B of the Act, as amended by Pub. L. 94-412. Those regulations are incorporated in Regs. 300.560-300.576 of Subpart E.

Statutory Citations

Federal

Reg. 300.130 Individualized education programs.

(a) Each annual program plan must include information which shows that each public agency in the State maintains records of the individualized education program for each handicapped child, and each public agency establishes, reviews, and revises each program as provided in Subpart C.

(b) Each annual program plan must include:

(1) A copy of each State statute, policy, and standard that regulates the manner in which individualized education programs are developed, implemented, reviewed, and revised, and

(2) The procedures which the State educational agency follows in monitoring and evaluating those programs.

(20 U.S.C. 1412(4))

Statutory Citations

Federal

Reg. 300.131 Procedural safeguards.

Each annual program plan must include procedural safeguards which insure that the requirements in Regs. 300.500-300.514 of Subpart E are met.

(20 U.S.C. 1412(5)(A))

Statutory Citations

Federal

Reg. 300.132 Least restrictive environment.

(a) Each annual program plan must include procedures which insure that the requirements in Regs. 300.550-300.556 of Subpart E are met.

(b) Each annual program plan must include the following information:

(1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with Regs. 300.550-300.556 of Subpart E.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(20 U.S.C. 1412(5)(B))

Statutory Citations

Federal

Reg. 300.133 Protection in evaluation procedures.

Each annual program plan must include procedures which insure that the requirments in Regs. 300.530-300.534 of Subpart E are met.

(20 U.S.C. 1412(5)(C))

Statutory Citations

Federal

Reg. 300.134 Responsibility of State educational agency for all educational programs.

(a) Each annual program plan must include information which shows that the requirements in Reg. 300.600 of Subpart F are met.

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph.

(20 U.S.C. 1412(6))

Statutory Citations

Federal

Reg. 300.136 Implementation procedures--State educational agency.

Each annual program plan must describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that public agency.

(20 U.S.C. 1412(6))

Statutory Citations

Federal

Reg. 300.137 Procedures for consultation.

Each annual program plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children.

(20 U.S.C. 1412(7)(A))

Statutory Citations

Federal

Reg. 300.138 Other Federal programs.

Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e-2), section 305(b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title IV-C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, are used by the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(20 U.S.C. 1413(a)(2))

Statutory Citations

Federal

Reg. 300.139 Comprehensive system of personnel development.

Each annual program plan must include the material required under Regs. 300.380-300.387 of Subpart C.

(20 U.S.C. 1413(a)(3))

Statutory Citations

Federal

Reg. 300.140 Private schools.

Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met.

(20 U.S.C. 1413(a)(4))

Statutory Citations

Federal

Reg. 300.141 Recovery of funds for misclassified children.

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.

(20 U.S.C. 1413(a)(5))

Statutory Citations

Federal

Reg. 300.146 Annual evaluation.

Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.

(20 U.S.C. 1413(a)(11))

Statutory Citations

Federal

Reg. 300.145 Prohibition of commingling.

Each annual program plan must provide assurance satisfactory to the Secretary that funds provided under Part B of the Act are not commingled with State funds.

(20 U.S.C. 1413(a)(9))

Comment. This assurance is satisfied by the use of a separate accounting system that includes an "audit trail" of the expenditure of the Part B funds. Separate bank accounts are not required. (See 34 CFR 76, Subpart F (Cash Depositories).)

Statutory Citations

Federal

Reg. 300.146 Annual evaluation.

Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.

(20 U.S.C. 1413(a)(11))

Statutory Citations

Federal

Reg. 300.147 State advisory panel.

Each annual program plan must provide that the requirements of Regs. 300.650-300.653 of Subpart F are met.

(20 U.S.C. 1413(a)(12))

Statutory Citations

Federal

Reg. 300.148 Policies and procedures for use of Part B funds.

Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act.

(20 U.S.C. 1413(a)(1))

Statutory Citations

Federal

Reg. 300.149 Description of use of Part B funds.

(a) State allocation. Each annual program plan must include the following information about the State's use of funds under Reg. 300.370 of Subpart C and Reg. 300.620 of Subpart F:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the State educational agency will carry out during the next school year with those funds.

(4) A description of each direct service and each support service which the State educational agency will provide during the next school year with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) Local educational agency allocation. Each annual program plan must include:

(1) An estimate of the number and percent of local educational agencies in the State which will receive an allocation under this part (other than local educational agencies which submit a consolidated application).

(2) An estimate of the number of local educational agencies which will receive an allocation under a consolidated application.

(3) An estimate of the number of consolidated applications and the average number of local educational agencies per application, and

(4) A description of direct services the State educational agency will provide under Reg. 300.360 of Subpart C.

(20 U.S.C. 1232c(b)(1)(B)(ii))

Statutory Citations

Federal

Reg. 300.151 Additional information if the State educational agency provides direct services.

If a State educational agency provides free appropriate public education for handicapped children or provides them with direct services, its annual program plan must include the information required under Regs. 300.226-300.228, 300.231, and 300.235.

(20 U.S.C. 1413(b))

LOCAL EDUCATIONAL AGENCY APPLICATIONS--GENERAL

Statutory Citations

Federal

Reg. 300.180 Submission of application.

In order to receive payments under Part B of the Act for any fiscal year a local educational agency must submit an application to the State educational agency.

(20 U.S.C. 1414(a))

Statutory Citations

Federal

Reg. 300.182 The excess cost requirement.

A local educational agency may only use funds under Part B of the Act for the excess costs of providing special education and related services for handicapped children.

(20 U.S.C. 1414(a)(1), (a)(2)(B)(i))

Statutory Citations

Federal

Reg. 300.183 Meeting the excess cost requirement.

(a) A local educational agency meets the excess cost requirement if it has on the average spent at least the amount determined under Reg. 300.184 for the education of each of its handicapped children. This amount may not include capital outlay or debt service.

(20 U.S.C. 1402(20); 1414(a)(1))

Comment. The excess cost requirement means that the local educational agency must spend a certain minimum amount for the education of its handicapped children before Part B funds are used. This insures that children served with Part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of handicapped children is computed under a statutory formula. Section 300.184 implements this formula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services which exceed the minimum amount. Therefore, if a local educational agency can show that it has (on the average) spent the minimum amount for the education of each of its handicapped children, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to other requirements of Part B (priorities, etc.). In the "Comment" under section 300.184, there is an example of how the minimum amount is computed.

Statutory Citations

Federal

Reg. 300.184 Excess costs--computation of minimum amount.

The minimum average amount a local educational agency must spend under Reg. 300.183 for the education of each of its handicapped children is computed as follows:

(a) Add all expenditures of the local educational agency in the preceding school year, except capital outlay and debt service:

(1) For elementary school students, if the handicapped child is an elementary school student, or

(2) For secondary school students, if the handicapped child is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be:

(1) Amounts the agency spent in the preceding school year from funds awarded under Part B of the Act and Titles I and VII of the Elementary and Secondary Education Act of 1965, and

(2) Amounts from State and local funds which the agency spent in the preceding school year for:

(i) Programs for handicapped children,

(ii) Programs to meet the special educational needs of educationally deprived children, and

(iii) Programs of bilingual education for children with limited English-speaking ability.

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year:

(1) In its elementary schools, if the handicapped child is an elementary school student, or

(2) In its secondary schools, if the handicapped child is a secondary school student.

(20 U.S.C. 1414(a)(1))

Comment. The following is an example of how a local educational agency might compute the average minimum amount it must spend for the education of each of its handicapped children, under Reg. 300.183. This example follows the formula in Reg. 300.184. Under the statute and regulations, the local educational agency must make one computation for handicapped children in its elementary schools and a separate computation for handicapped children in its secondary schools. The computation for handicapped school students would be done as follows:

a. First, the local educational agency must determine its total amount of expenditures for elementary school students from all sources--local, State, and Federal (including Part B)--in the preceding school year. Only capital outlay and debt service are excluded.

Example: A local educational agency spent the following amounts last year for elementary school students (including its handicapped elementary school students):

(1) From local tax funds	$ 2,750,000
(2) From State funds	7,000,000
(3) From Federal funds	750,000
	$10,500,000

Of this total, $500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures:

	$10,500,000
	- 500,000
Total expenditures for elementary school students (less capital outlay and debt service)	$10,000,000

b. Next, the local educational agency must subtract amounts spent for:

(1) Programs for handicapped children;

(2) Programs to meet the special educational needs of educationally deprived children; and

(3) Programs of bilingual education for children with limited English-speaking ability.

These are funds which the local educational agency actually spent, not funds received last year but carried over for the current school year.

Example: The local educational agency spent the following amounts for elementary school students last year:

(1) From funds under Title I of the Elementary and Secondary Education Act of 1965	$ 300,000
(2) From a special State program for educationally deprived children	200,000
(3) From a grant under Part B	200,000
(4) From State funds for the education of handicapped children	500,000
(5) From a locally-funded program for handicapped children	250,000
(6) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965	150,000
Total	$1,600,000

(A local educational agency would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: handicapped children, educationally deprived children, and bilingual education for children with limited English-speaking ability.)

This amount is subtracted from the local educational agency's total expenditure for elementary school students computed above:

$10,000,000
-1,600,000

$ 8,400,000

c. The local educational agency next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its handicapped students).

Example: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph:

$8,400,000/7,000 students equals $1,200/student.

This figure is in the minimum amount the local educational agency must spend (on the average) for the education of each of its handicapped students. Funds under Part B may be used only for costs over and above this minimum. In this example, if the local educational agency has 100 handicapped elementary school students, it must keep records adequate to show that it has spent at least $120,000 for the education of those students (100 students times $1,200/student), not including capital outlay and debt service.

This $120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the local educational agency has handicapped secondary school students, it must do the same computation for them. However the amounts used in the computation would be those the local educational agency spent last year for the education of secondary school students, rather than for elementary school students.

Statutory Citations

Federal

Reg. 300.185 Computation of excess costs--consolidated application.

The minimum average amount under Reg. 300.183 where two or more local educational agencies submit a consolidated application, is the average of the combined minimum average amounts determined under Reg. 300.184 in those agencies for elementary or secondary school students, as the case may be.

(20 U.S.C. 1414(a)(1))

Statutory Citations

Federal

Reg. 300.186 Excess costs--limitation on use of Part B funds.

(a) The excess cost requirement prevents a local educational agency from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a handicapped child, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent a local educational agency from using Part B funds to pay for all of the costs directly attributable to the education of a handicapped child in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for nonhandicapped children in that age range. However, the local educational agency must comply with the nonsupplanting and other requirements of this part in providing the education and services.

(20 U.S.C. 1402(20); 1414(a)(1))

Statutory Citations

Federal

Reg. 300.190 Consolidated applications.

(a) [Reserved]

(b) Required Applications. A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because:

(1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act (Reg. 300.360(a)(1) of Subpart C); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(c) Size and Scope of Program. The State educational agency shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

[42 FR 42476, August 23, 1977, as amended at 45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980]

Statutory Citations

Federal

Reg. 300.192 State regulation of consolidated applications.

(a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part.

(b) The State educational agency's regulations must:

(1) Be consistent with Section 612(1)-(7) and Section 613(a) of the Act, and

(2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(20 U.S.C. 1414(c)(2)(B))

(c) If an intermediate educational unit is required under State law to carry out this part, the joint responsibilities given to local educational agencies under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the intermediate educational unit. Those administrative responsibilities must be carried out exclusively by the intermediate educational unit.

(20 U.S.C. 1414(c)(2)(B)

Statutory Citations

Federal

Reg. 300.193 State educational agency approval; disapproval.

(a)-(b) [Reserved]

(c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under Regs. 300.506-300.513 of Subpart E which is adverse to the local educational agency involved in the decision.

(20 U.S.C. 1414(b)(3))

[42 FR 42476, August 23, 1977, as amended at 45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980]

Statutory Citations

Federal

Reg. 300.194 Withholding.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, decides that the local educational agency in the administration of an application approved by the State educational agency has failed to comply with any requirement in the application, the State educational agency, after giving notice to the local educational agency, shall:

(1) Make no further payments to the local educational agency until the State educational agency is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the local educational agency under Reg. 300.180;

(3) Or both.

(b) Any local educational agency receiving a notice from a State educational agency under paragraph (a) of this section is subject to the public notice provision in Reg. 300.592.

(20 U.S.C. 1414(b)(2))

LOCAL EDUCATIONAL AGENCY APPLICATIONS--CONTENTS

Statutory Citations

Federal

Reg. 300.220 Child identification.

Each application must include procedures which insure that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(20 U.S.C. 1414(a)(1)(A))

Comment. The local educational agency is responsible for insuring that all handicapped children within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements in Regs. 300.560-300.576 of Subpart E.

Statutory Citations

Federal

Reg. 300.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures which insure that the criteria in Regs. 300.560-300.574 of Subpart E are met.

(20 U.S.C. 1414(a)(1)(B))

Statutory Citations

Federal

Reg. 300.222 Full educational opportunity goal; timetable.

Each application must: (a) Include a goal of providing full educational opportunity to all handicapped children, aged birth through 21, and

(b) Include a detailed timetable for accomplishing the goal.

(20 U.S.C. 1414(a)(1)(C), (D))

Statutory Citations

Federal

Reg. 300.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in Reg. 300.222.

(20 U.S.C. 1414(a)(1)(E))

Statutory Citations

Federal

Reg. 300.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under Reg. 300.140.

(20 U.S.C. 1414(a)(1)(C)(i))

Statutory Citations

Federal

Reg. 300.225 Priorities.

Each application must include priorities which meet the requirements of Regs. 300.320-300.324.

(20 U.S.C. 1414(a)(1)(C)(ii))

Statutory Citations

Federal

Reg. 300.226 Parent involvement.

Each application must include procedures to insure that, in meeting the goal under Reg. 300.222, the local educational agency makes provision for participation of and consultation with parents or guardians of handicapped children.

(20 U.S.C. 1414(a)(1)(C)(iii))

Statutory Citations

Federal

Reg. 300.227 Participation in regular education programs.

(a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with Regs. 300.550-300.553 of Subpart E, the local educational agency provides special services to enable handicapped children to participate in regular educational programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for handicapped children, and

(2) The number of handicapped children within each disability category who are served in each type of placement.

(20 U.S.C. 1414(a)(1)(C)(iv))

§89.218 Participation of Special Education Students in Regular Education Programs.

(a) In providing programs, services, and activities for handicapped students, a school district shall first use those resources made available to all students.

(b) When appropriate, special education students shall:

(1) remain in the regular education program with special education support services, supplementary aids, or other special arrangements, if needed;

(2) be educated to the maximum extent appropriate with students who are not handicapped;

(3) be placed in a program as close as possible to the student's home;

(4) be provided opportunities to participate in school activities on the same basis as non-handicapped students; and

(5) be offered an opportunity for interaction with non-handicapped students on a regular basis.

Statutory Citations

Federal

Reg. 300.229 Excess cost.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act only for costs which exceed the amount computed under Reg. 300.184 and which are directly attributable to the education of handicapped children.

(20 U.S.C. 1414(a)(2)(B))

Statutory Citations

Federal

Reg. 300.230 Nonsupplanting.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section:

(1) The total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of handicapped children in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

(i) Decreases in enrollment of handicapped children; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and

(2) The local educational agency must not use Part B funds to displace State or local funds for any particular cost.

(20 U.S. C. 1414(a)(2)(B))

Comment. Under statutes such as Title I of the Elementary and Secondary Education Act of 1965, as amended, the requirement is to not supplant funds that "would" have been expended if the Federal funds were not available. The requirement under Part B, however, is to not supplant funds which have been "expended." This use of the past tense suggests that the funds referred to are those which the State or local agency actually spent at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Commissioner looks to see if Part B funds are used for any costs which were previously paid for with State or local funds.

The nonsupplanting requirement prohibits a local educational agency from supplanting State and local funds with Part B funds on either an aggregate basis or for a given expenditure. This means that if an LEA spent $100,000 for special education in FY 1977. it must budget at least $100,000 in FY 1978, unless one of the conditions in Reg. 300.230(b)(1) applies.

Whether a local educational agency supplants with respect to a particular cost would depend on the circumstances of the expenditure. For example, if a teacher's salary has been switched from local funding to Part B funding, this would appear to be supplanting. However, if that teacher was taking over a different position (such as a resource room teacher, for example), it would not be supplanting. Moreover, it might be important to consider whether the particular action of a local educational agency led to an increase in services for handicapped children over that which previously existed. The intent of the requirement is to insure that Part B funds are used to increase State and local efforts and are not used to take their place. Compliance would be judged with this aim in mind. The supplanting requirement is not intended to inhibit better services to handicapped children.

Statutory Citations

Federal

Reg. 300.231 Comparable services.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency meets the requirements of this section.

(b) A local educational agency may not use funds under Part B of the Act to provide services to handicapped children unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency.

(c) Each local educational agency shall maintain records which show that the agency meets the requirement in paragraph (b) of this section.

(20 U.S.C. 1414(a)(2)(C))

Comment. Under the "comparability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in the local educational agency who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under Regs. 300.320-300.324.

Statutory Citations

Federal

Reg. 300.235 Individualized education program.

Each application must include procedures to assure that the local educational agency complies with Regs. 300.340-300.349 of Subpart C.

(20 U.S.C. 1414(a)(5))

Statutory Citations

Federal

Reg. 300.237 Procedural safeguards.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of Regs. 300.500-300.514 of Subpart E.

(20 U.S.C. 1414(a)(7))

Statutory Citations

Federal

Reg. 300.238 Use of Part B funds.

Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year.

(20 U.S.C. 1414(a))

§89.219 Use of Federal Funds.

(a) Federal funds for programs for handicapped students shall be used in accordance with applicable state and federal laws, approved state plans, and any special provisions applicable to contracts or grants awarded by the Texas Education Agency.

(b) For all federal funding sources administered by the Texas Education Agency, eligible handicapped students shall be reported by the district which is serving them. In those cases where ADA is counted, the district receiving the ADA will be the district which counts and reports the students for federal funds.

Statutory Citations

Federal

Reg. 300.240 Other requirements.

Each local application must include additional procedures and information which the State educational agency may require in order to meet the State annual program plan requirements under Regs. 300.120-300.151.

(20 U.S.C. 1414(a)(6))

APPLICATION FROM SECRETARY OF INTERIOR

Statutory Citations

Federal

Reg. 300.260 Submission of annual application; approval.

In order to receive payments under this part, the Secretary of Interior shall submit an annual application which:

(a) Meets applicable requirements of Section 614(a) of the Act;

(b) Includes monitoring procedures which are consistent with Reg. 300.601; and

(c) Includes other material as agreed to by the Commissioner and the Secretary of Interior.

(20 U.S.C. 1411(f))

Statutory Citations

Federal

Reg. 300.261 Public participation.

In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with Regs. 300.280-300.284.

(20 U.S.C. 1411(f))

Statutory Citations

Federal

Reg. 300.262 Use of Part B funds.

(a) The Department of Interior may use five percent of its payments in any fiscal year, or $200,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.

(b) The remainder of the payments to the Secretary of the Interior in any fiscal year must be used in accordance with the priorities under Reg. 300.320-300.324 of Subpart C.

(20 U.S.C. 1411(f))

Statutory Citations

Federal

Reg. 300.263 Applicable regulations.

The Secretary of the Interior shall comply with the requirements under Subparts C, E, and F.

(20 U.S.C. 1411(f)(2))

PUBLIC PARTICIPATION

Statutory Citations

Federal

Reg. 300.280 Public hearings before adopting an annual program plan.

(a) Prior to its adoption of an annual program plan, the State educational agency shall:

(1) Make the plan available to the general public,

(2) Hold public hearings, and

(3) Provide an opportunity for comment by the general public on the plan.

(20 U.S.C. 1412(7))

Statutory Citations

Federal

Reg. 300.281 Notice.

(a) The State educational agency shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the public about:

(1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act,

(2) The availability of the annual program plan,

(3) The date, time, and location of each public hearing,

(4) The procedures for submitting written comments about the plan, and

(5) The timetable for developing the final plan and submitting it to the Secretary for approval.

(c) The notice must be published or announced:

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, and

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(20 U.S.C. 1412(7))

Statutory Citations

Federal

Reg. 300.282 Opportunity to participate; comment period.

(a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under Reg. 300.281.

(20 U.S.C. 1412(7))

Statutory Citations

Federal

Reg. 300.283 Review of public comments before adopting plan.

Before adopting its annual program plan, the State educational agency shall:

(a) Review and consider all public comments, and

(b) Make any necessary modifications in the plan.

(20 U.S.C. 1412(7))

Statutory Citations

Federal

Reg. 300.284 Publication and availability of approved plan.

After the Secretary approves an annual program plan, the State educational agency shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(20 U.S.C. 1412(7))

Subpart C--Services

FREE APPROPRIATE PUBLIC EDUCATION

Statutory Citations

Federal

Reg. 300.300 Timelines for free appropriate public education.

(a) General. Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

State

"(a) The commissioner of education, with the approval of the State Board of Education, shall develop, and modify as necessary, a statewide design for the delivery of services to handicapped children in Texas which includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all handicapped children between the ages of three and 21 by no later than September 1, 1980. The statewide design shall include, but may not be limited to, the provision of services primarily through local school districts and special education cooperatives, supplemented by a regional delivery structure." (Texas Education Code Section 16.104(a))

"Eligible handicapped students shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts..." (Texas Education Code Section 16.104(c))

§89.220 Age-ranges for Student Eligibility.

(a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible children who have reached their third birthday and have not reached their twenty-first birthday on September 1 of the current scholastic year.

(b) In accordance with Texas Education Code §§11.052 and 11.10, a free appropriate public education shall be available to visually handicapped students and hearing impaired students from birth.

(b) Age ranges 3-5 and 18-21. This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one:

(1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability.

(2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability.

(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to non-handicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168 p. 19 (1975))

Comment. 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under Reg. 300.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under Reg. 300.321.

2. In order to be in compliance with Reg. 300.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with Regs. 300.530-300.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four-year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a Statewide basis.

Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under Reg. 300.300, the State may, at its discretion, extend services to those children, subject to the requirements on priorities under Regs. 300.320-300.324.

Statutory Citations

Federal

Reg. 300.301 Free appropriate public education--methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided or to pay for services provided to a handicapped child.

(20 U.S.C. 1401(18); 1412(2)(B))

State

"(a) The commissioner of education, with the approval of the State Board of Education, shall develop, and modify as necessary, a statewide design for the delivery of services to handicapped children in Texas....The commissioner shall further develop and implement a statewide plan with programmatic content which includes procedures designed to:

(1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to handicapped students as defined in this section;...." (Texas Education Code Section 16.104(a)(1))

Statutory Citations

Federal

Reg. 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

Comment. This requirement applies to placements which are made by public agencies for educational purposes, and includes placements in State-operated schools for the handicapped, such as a State school for the deaf or blind.

State

"(1) Except as provided by Subsection (m) of this section, contracts for residential placements when approved may be paid for from a combination of federal, state, and local funds. The local share of the total contract cost per pupil is that portion of the local tax effort (total dollars generated by debt service and maintenance taxes) which exceeds the district's local fund assignment, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that which remains after subtracting the local share. If the contract involves a public facility other than a program or facility administered by the Central Education Agency, the state share is that which remains after subtracting the local share from that portion of the contract which involves the costs of instructional and related services. If the contract involves a program or facility administered by the Central Education Agency, there is no state share paid from this program." (Texas Education Code Section 16.104(1)

Statutory Citations

Federal

Reg. 300.303 Proper functioning of hearing aids.

Each public agency shall insure that the hearing aids worn by deaf and hard of hearing children in school are functioning properly.

(20 U.S.C. 1412(2)(B))

Comment. The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(House Report No. 95-381, p. 67 (1977))

Statutory Citations

Federal

Reg. 300.304 Full educational opportunity goal.

(a) Each State educational agency shall insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children in the area served by the public agency.

(b) Subject to the priority requirements under Regs. 300.320-300.324, a State or local educational agency may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Comment. In meeting the full educational opportunity goal, the Congress also encouraged local educational agencies to include artistic and cultural activities in programs supported under this part, subject to the priority requirements under Regs. 300.320-300.324. This point is addressed in the following statements from the Senate Report on Pub. L. 94-142:

The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges the local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in Federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Senate Report No. 94-168, p. 13 (1975))

State

"(c) Any educational institution supported either wholly or in part by state tax funds shall, if undertaking to provide educational services to any individual within the jurisdiction or geographical boundaries of the educational institution, provide equal educational opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to the provisions of this code and pursuant to the provisions of regulations promulgated by the Central Education Agency to give effect to the intent of the legislature in its enactment of this code. No individual otherwise eligible for educational services through an educational institution supported either wholly or in part by state tax funds may deny services to any handicapped student as defined in Section 16.104 of this code, but the educational institution shall instead be obligated to provide handicapped individuals such special educational services as might from time to time be authorized by law or, where expressly authorized, to assist in and contribute towards the provision of appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments." (Texas Education Code Section 1.04(c))

"(a) The Central Education Agency shall develop and administer a comprehensive statewide plan for the education of visually handicapped children under 21 years of age which will ensure that the children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision." (Texas Education Code Section 11.052(a))

"(n) The legislature by the addition of this and the following subsections to this Section 11.10, Texas Education Code, intends to continue a process of providing better education available to deaf children on a statewide basis in Texas, and to afford all deaf children an opportunity for achievement more equal to their peers with normal hearing." (Texas Education Code Section 11.10(n))

Statutory Citations

Federal

Reg. 300.305 Program options.

Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to nonhandicapped children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Comment. The above list of program options is not exhaustive, and could include any program or activity in which nonhandicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefit fully from those programs; and the set-aside funds under the Vocational Education Act of 1963, as amended by Pub. L. 94-482, may be used for this purpose. Part B funds may also be used, subject to the priority requirements under Regs. 300.320-300.324.

State

"(9) ensure that, when appropriate, each handicapped student is provided an opportunity to participate in vocational and physical education classes, in addition to participation in regular or special classes;..." (Texas Education Code (Section 16.104(a)(9))

Statutory Citations

Federal

Reg. 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Statutory Citations

Federal

Reg. 300.307 Physical education.

(a) General. Physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education.

(b) Regular physical education. Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to nonhandicapped children unless:

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's individualized education program.

(c) Special physical education. If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall insure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(20 U.S.C. 1401(16); 1412(5)(B); 1414(a)(6))

Comment. The Report of the House of Representatives on Pub. L. 94-142 includes the following statement regarding physical education:

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all nonhandicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

State

"(9) ensure that, when appropriate, each handicapped student is provided an opportunity to participate in vocational and physical education classes, in addition to participation in regular or special classes;..." (Texas Education Code Section 16.104(a)(9))

* * *

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(House Report No. 94-332, p. 9 (1975))

PRIORITIES IN THE USE OF PART B FUNDS

Statutory Citations

Federal

Reg. 300.320 Definitions of "first priority children" and "second priority children."

For the purposes of Regs. 300.321-300.324, the term:

(a) "First priority children" means handicapped children who:

(1) Are in an age group for which the State must make available free appropriate public education under Reg. 300.300; and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education.

(20 U.S.C. 1412(3))

Comment. After September 1, 1978, there should be no second priority children, since States must insure, as a condition of receiving Part B funds for fiscal year 1979, that all handicapped children will have available a free appropriate public education by that date.

NOTE--The term "free appropriate public education," as defined in Reg. 300.4 of Subpart A, means "special education and related services which * * * are provided in conformity with an individualized education program * * *."

New "First priority children" will continue to be found by the State after September 1, 1978, through on-going efforts to identify, locate, and evaluate all handicapped children.

Statutory Citations

Federal

Reg. 300.321 Priorities.

(a) Each State and local educational agency shall use funds provided under Part B of the Act in the following order of priorities:

(1) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide free appropriate public education to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements in this part.

(b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under Reg. 300.620.

(20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

(c) State and local educational agencies may not use funds under Part B of the Act for preservice training.

(20 U.S.C. 1413(a)(3); Senate Report No. 94-168, p. 34 (1975))

Comment. Note that a State educational agency as well as local educational agencies must use Part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its Part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, Part B funds may be used:

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide free appropriate public education to newly identified first priority children;

(3) To meet the full educational opportunities goal required under 300.304, including employing additional personnel and providing in-service training, in order to increase the level, intensity and quality of services provided to individual handicapped children; and

(4) To meet the other requirements of Part B.

Statutory Citations

Federal

Reg. 300.322 First priority children--school year 1977-1978.

(a) In school year 1977-1978, if a major component of a first priority child's proposed educational program is not available (for example, there is no qualified teacher), the public agency responsible for the child's education shall:

(1) Provide an interim program of services for the child; and

(2) Develop an individualized education program for full implementation no later than September 1, 1978.

(b) A local educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all of its first priority children have available to them at least an interim program of services.

(c) A State educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all first priority children in the State have available to them at least an interim program of services.

(20 U.S.C. 1411(b), (c))

Comment. This provision is intended to make it clear that a State or local educational agency may not delay placing a previously unserved (first priority) child until it has, for example, implemented an in-service training program. The child must be placed. After the child is in at least an interim program, the State or local educational agency may use Part B funds for training or other support services needed to provide that child with a free appropriate public education.

Statutory Citations

Federal

Reg. 300.323 Services to other children.

If a State or a local educational agency is providing free appropriate public education to all its first priority children, that State or agency may use funds provided under Part B of the Act:

(a) To provide free appropriate public education to handicapped children who are not receiving any education and who are in the age groups not covered under Reg. 300.300 in that State; or

(b) To provide free appropriate public education to second priority children; or

(c) Both.

(20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))

Statutory Citations

Federal

Reg. 300.324 Application of local educational agency to use funds for the second priority.

A local educational agency may use funds provided under Part B of the Act for second priority children, if it provides assurance satisfactory to the State educational agency in its application (or an amendment to its application):

(a) That all first priority children have a free appropriate public education available to them;

(b) That the local educational agency has a system for the identification, location, and evaluation of handicapped children, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the local educational agency makes available a free appropriate public education to the child.

(20 U.S.C. 1411(b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii))

INDIVIDUALIZED EDUCATION PROGRAMS

Statutory Citations

Federal

Reg. 300.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with Regs. 300.341-300.349.

(20 U.S.C. 1401(19))

Statutory Citations

Federal

Reg. 300.341 State educational agency responsibility.

(a) Public agencies. The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) Private schools and facilities. The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412(4), (6); 1413(a)(4))

Comment. This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

State

"(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following:

(2) procedures, format, and content of the individualized written service plan for each such visually handicapped child;...

(6) a statewide admission, review, and dismissal process;..." (Texas Education Code Section 11.052(c)(2) and (6))

"(8) ensure that an individualized education plan for each handicapped student is properly developed, implemented, and maintained in the least restrictive environment which is appropriate to meet the student's educational needs;" (Texas Education Code Section 16.104(a)(8))

"(n) The resident district has the ultimate responsibility for providing or causing the provision of appropriate services to each handicapped student. If the district contracts for the provision of services rather than providing the services of its own accord, then that district retains the responsibility of overseeing the implementation of the student's individualized education plan as well as the responsibility of an annual reevaluation of the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall assume as a part of the contract the responsibility of providing the district with periodic reports of services the student has received or will receive in accordance with the terms of the contract as well as diagnostic or other evaluative information which the district requires in order to fulfill its obligations under this section. The State Board of Education shall adopt rules designed to effectuate this subsection." (Texas Education Code Section 16.104(n))

Statutory Citations

Federal

Reg. 300.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under Reg. 300.343.

(20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, Sec. 8(c) (1975))

Comment. Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under Reg. 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

Statutory Citations

Federal

Reg. 300.343 Meetings.

(a) General. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) Handicapped children currently served. If the public agency has determined that a handicapped child will receive special education during school year 1977-1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) Other handicapped children. For a handicapped child who is not included under paragraph (b) of this section, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) Review. Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

State

"The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include, but not be limited to, the following:...a statewide admission, review, and dismissal process..." (Texas Education Code Section 11.052(c)(6))

§89.221 The Admission, Review, and Dismissal (ARD) Committee.

(a) Each school district or special education cooperative shall establish at least one admission, review, and dismissal (ARD) committee which shall make decisions concerning the educational program of a student referred for consideration for special education.

(b) The ARD committee shall perform the following functions for each student considered for special education:

(1) review all data from the comprehensive assessment including information from parents, school personnel, or other sources;

(2) ensure that national origin minority group students (or linguistically different students) are not assigned to special education on the basis of criteria which were developed solely based on command of the English language;

(3) ensure that students are not placed in special education if the only deficiencies identified are directly attributable to a different cultural lifestyle, or to not having had educational opportunities;

(4) ensure that alternatives are reviewed and additional services are discussed;

(5) establish eligibility for special education services;

(6) develop the individual educational plan;

(7) provide for educational placement in the least restrictive environment appropriate to meet the needs of the student;

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in Reg. 300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in Reg. 300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left the discretion of the agency.

(8) determine each student's continuing eligibility and need for special education based on the comprehensive three-year reappraisal; and

(9) review all special education assignments at least annually to determine the need for continuation, change, reappraisal, or termination.

(c) The written report of the ARD committee shall document the finding required by subsection (b) of this section. The report shall include the date, names, positions, and signatures of the persons participating in each meeting and shall indicate each member's agreement or disagreement with the committee's decision.

(d) The written assessment report must be completed within 30 school days of the date that the initial referral to special education for comprehensive assessment was received. The ARD committee shall make its decision regarding students referred for the first time within 30 calendar days from the date of the completion of the written assessment report. When this 30th day occurs during the summer, when school is not in session, the ARD committee shall have until the first day of classes in the fall to have made the written assessment, placement, and IEP decisions.

(e) For a student who is new to the school district, the ARD committee may meet when the student registers and may determine that the student is eligible under the following conditions:

(1) the parent(s) verify that the student is handicapped and was receiving special education services in the previous school district;

(2) the previous school district verifies in writing or by telephone that the student was an eligible handicapped student;

(3) placement in special education is temporary, contingent upon either receipt of valid assessment data from the previous school district or the collection of new assessment data; and

(4) a second ARD committee meeting is held within 30 school days to develop an IEP based on the assessment data.

(f) For the hearing impaired student for whom the ARD committee has recommended services through a Regional Day School Program for the Deaf or in another out-of-district placement, the ARD committee from the sending school district shall share responsibility for the development of the individual educational plan with an ARD committee composed of appropriate personnel from the Regional Day School Program for the Deaf or the out-of-district program in which the student is placed. The sending school district remains ultimately responsible for ensuring that a free appropriate education is provided to the student.

(g) Persons other than those listed in this subsection may be present at, and participate in, ARD committee meetings at the discretion of the school district, the parent, or the student; however, the committee shall include, under the circumstances described in this section, the following voting members in determining its actions:

(1) A representative from the local school district administration or a qualified and authorized designee as approved by the superintendent shall always be included.

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(2) A representative from instruction shall always be included. This representative may be either:

(A) the student's current special education teacher; or

(B) an appropriate regular classroom teacher for those students expected to receive academic instruction in regular education.

(C) For initial placements for pre-school students and for severely handicapped students, the representative from instruction shall be an appropriate special education teacher.

(3) The student's parent or designated representative under the following conditions:

(A) if the student is under 18 years of age; or

(B) if the student is 18 years of age or older and has been judged by an appropriate court of law to be incompetent to manage personal affairs or has relinquished rights to parents in writing.

(4) The student when appropriate.

(5) A representative from the special education assessment team who shall be included for initial and three-year reevaluation ARD committee meetings, and as needed for ARD committee annual or special reviews when there is reason to suspect that assessment issues will be included in the ARD committee's deliberations. For students considered as only speech handicapped, the speech therapist may serve as the representative from assessment.

(6) A professional certified in the education of the visually handicapped, when a visually handicapped student is being considered. For visually handicapped students from birth through age two or for students who are deaf-blind, the teacher of visually handicapped infants or the teacher of deaf-blind students, as appropriate, may be one of the members of the ARD committee in place of the teacher of the visually handicapped.

(7) A professional certified in education of the deaf, when an auditorially handicapped student is being considered.

(8) The vocational administrator or designee and the vocational teacher who will instruct the student shall be members of the ARD committee when the committee is considering placement in vocational education programs. At local district discretion, the participation may be delegated as follows:

(A) The vocational administrator or designee shall participate when reviewing vocational assessment data including signed recommendations for vocational program placement and when planning for appropriate vocational program placement.

(B) The vocational administrator or designee and the teacher who will instruct the student shall participate when finalizing the placement in a vocationally specific program and developing the IEP.

Statutory Citations

Federal

Reg. 300.344 Participants in meetings.

(a) General. The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to Reg. 300.345.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) Evaluation personnel. For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412(2)(B), (4), (6); 1414(a)(5))

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

State

"(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized written service plan which:

(2) shall be jointly developed by a representative of an educational program who is qualified and experienced in working with individuals handicapped by serious visual loss, by the blind or handicapped individual and his parent or guardian, and by representatives of other public or private organizations providing or capable of providing specialized services which tend to assure greater effectiveness of the educational effort exerted in behalf of the blind or visually handicapped individual;" (Texas Education Code Section 11.052(e)(2))

"The commissioner shall further develop and implement a statewide plan with programmatic content which includes procedures designed to:

(7) ensure that appropriately trained personnel are involved in the diagnostic and evaluation procedures operating in all local districts and that those personnel routinely serve on local district admissions, review, and dismissal teams;" (Texas Education Code Section 16.104 (a)(7))

(9) A professional representing the Language Proficiency Assessment Committee (established under Texas Education Code §21.462) when a student of limited English proficiency is being considered.

(10) Each ARD committee must include at least one representative from special education.

(h) If they choose to do so, the school district, the parent, or the student may tape record the ARD committee meeting. All participants in the meeting shall be informed that such a recording is being made.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

Statutory Citations

Federal

Reg. 300.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19); 1412(2)(B), (4), (6); 1414(a)(5))

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

§89.222 Parent Participation in ARD Committee Meetings.

(a) The district shall maintain documentation to indicate the extent of parent participation in the individual educational plan development and parent agreement or disagreement with admission, review, and dismissal committee action.

(b) If a parent is identified but is unavailable or refuses to participate in an admission, review, and dismissal committee meeting, after the school has exhausted the avenues provided in federal regulations, the school district may proceed with its responsibilities for planning and educating a handicapped student. The school district must document its efforts to contact or include the parent.

(c) If a parent refuses or otherwise does not give consent prior to the initiation of formal evaluation procedures or for initial special education program placement, the school district shall first ensure with all reasonable effort that the parent understands the proceedings and understands his or her rights. The school district shall attempt to come to agreement with parents. If these attempts fail, the district may pursue mediation, or may pursue legal action as authorized by the Texas Education Code, the Texas Family Code, or applicable federal statutes and regulations. (Note: Handicapped students are subject to the provision of compulsory student attendance in Texas Education Code §§21.032 and 21.033.)

(d) A parent may request an ARD committee meeting at any mutually agreeable time to address specific concerns about his or her child's special education program. The school district must respond to the parent's request either by holding the requested meeting or by requesting assistance through the Texas Education Agency's mediation process.

Statutory Citations

Federal

Reg. 300.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412(2)(B), (4), (6); 1414(a)(5); Senate Report No. 94-168, p. 11 (1975))

State

"(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized written service plan which:

(1) shall be developed following adequate diagnosis and evaluation of all pertinent medical, psychological, social, cultural, environmental, and related factors which bear on the individual's ability to benefit from educational programs;

(2) shall be jointly developed by a representative of an educational program who is qualified and experienced in working with individuals handicapped by serious visual loss, by the blind or handicapped individual and his parent or guardian, and by representatives of other public or private organizations providing or capable of providing specialized services which tend to assure greater effectiveness of the educational effort exerted in behalf of the blind or visually handicapped individual;

(3) specifies in measurable terms the goals and objectives to be accomplished as a result of the educational and specialized services to be provided by the various organizations working with the blind or visually handicapped individual;

(4) specifies the time by which each service is to be initiated, the anticipated duration of each service, and the time within which the objectives and goals of the services might be achieved;

(5) contains a procedure and schedule for periodic review and evaluation of progress toward established objectives and goals based on objective criteria and contains a record of the reviews and evaluations;

(6) summarizes the views of the blind or visually handicapped individual, or as appropriate, his parent or guardian or other representative concerning his goals and objectives and the special services being provided;

(7) outlines the obligations undertaken by the individual's family in connection with the individualized written service plan, including family commitments regarding physical restoration services, procurement of optical aids, and related services;

(8) reflects that the individual has been provided a detailed explanation of the various service resources available to him within the community and throughout the state;

(9) reflects that the individualized written service plan has been reviewed as frequently as necessary, but in no event less than once annually, by competent educational authorities, representatives of cooperating organizations, the individual, and his parent or guardian and that the plan has been modified, refined, or redeveloped in a manner consistent with determinations made through such review;

(10) describes in detail the arrangements made to provide the blind or visually handicapped individual with orientation and mobility training, instruction in braille or use of large print, other training to compensate for serious visual loss, access to special media, and special tools, appliances, aids, or devices commonly utilized by individuals with serious visual losses; and

§89.223 Content of the Individual Educational Plan (IEP).

(a) The individual educational plan developed by the admission, review, and dismissal committee for each student shall include all of the elements required by federal regulations and the following additional information:

(1) A statement of the student's present competencies taken from the assessment data. This brief statement shall include:

(A) competencies of the student in academic content areas or developmental skills, when appropriate;

(B) physical abilities and disabilities which would affect participation in instructional settings or in physical education;

(C) behaviors which affect educational placement, programming or discipline; and

(D) skills which may be prerequisite to participation in vocational education, when appropriate.

(2) Annual goals, which a student may reasonably be expected to accomplish, shall address the educational priorities for the student.

(3) Short-term instructional objectives, which are measurable intermediate steps designed to lead to achievement of the annual goals, shall be included. While these objectives will be more specific than the annual goals it is not intended that they be as specific as the teacher's daily or weekly lesson plans for the student.

(4) The IEP shall specify the following:

(A) amount of time to be spent in each setting;

(B) position responsible for each special education related service to be provided;

(C) modifications necessary for the student to be successful in the regular, remedial, or supportive programs, if any; and

(D) a schedule for evaluating the progress of the student.

(5) Signatures of the committee members present and an indication of each member's agreement or disagreement with the decisions of the committee. Decisions must be supported by at least a majority of the required membership of the ARD committee.

(b) For visually handicapped students, the IEP shall also include content required in Texas Education Code §11.052(a).

(11) sets forth the plans and arrangements made for contacts with and continuing services to the blind or visually handicapped individual during periods in which he might not be involved in school programs." (Texas Education Code Section 11.052(e))

(c) For autistic students, the IEP shall also address the following items in addition to the requirements stated in subsection (a) of this section:

(1) extended educational programming;

(2) daily schedules reflecting minimal unstructured time;

(3) in-home training or viable alternatives;

(4) prioritized behavioral objectives;

(5) prevocational and vocational needs of students, ages 12 or older;

(6) parent training;

(7) suitable staff to students ratio; and

(8) a plan for transition into services after 21 years of age.

§89.224 Local District Procedures Required.

(a) Each school district or cooperative shall establish procedures which ensure the ongoing monitoring and evaluation of each handicapped student's progress in special education.

(b) Each school district or cooperative shall establish procedures which ensure that criteria and estimated timelines for returning contracted students to the local district are developed.

(c) Each school district or cooperative shall maintain an eligibility folder on each special education student in addition to the student academic record required in §61.163 of this title (relating to Records and Reports). The eligibility folder must include, but need not be limited to, copies of referral data, documentation of notices and consents, assessment reports and supporting data, ARD committee deliberations, and the IEP.

(d) Each district or cooperative shall establish procedures which ensure that when a hearing impaired student is placed outside the district of legal residence, copies of the ARD report will be forwarded from the school district of legal residence to the receiving district for use in developing the IEP.

(e) School district shall have written procedures which ensure that staff assigned to work with visually handicapped students have prompt and effective access directly to resources available through cooperating agencies including the education service center component for the visually handicapped, the Texas State Commission for the Blind, the Texas School for the Blind, and other similar types of resources.

(f) Each school district or cooperative shall provide parents of handicapped students written reports of the students' progress on the same timely basis as those provided to non-handicapped students.

§89.225 Transitional Services.

In accordance with §29.121 of this title (relating to Commitment to and Procedures for Nonbiased Pupil Appraisal), if the ARD committee determines that a student presently receiving special education services no longer meets current eligibility criteria because of a change in State Board of Education rules, the district or cooperative may provide special transitional services as specified by the ARD committee for up to one calendar year from state or local funds. Such students shall not be counted as special education students for reporting purposes.

Statutory Citations

Federal

Reg. 300.347 Private school placements.

(a) Developing individualized education programs. (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with Reg. 300.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized education program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) Reviewing and revising individualized education programs. (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B))

State

(n) The resident district has the ultimate responsibility for providing or causing the provision of appropriate services to each handicapped student. If the district contracts for the provision of services rather than providing the services of its own accord, then that district retains the responsibility of overseeing the implementation of the student's individualized education plan as well as the responsibility of an annual reevaluation of the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall assume as a part of the contract the responsibility of providing the district with periodic reports of services the student has received or will receive in accordance with the terms of the contract as well as diagnostic or other evaluative information which the district requires in order to fulfill its obligations under this section. The State Board of Education shall adopt rules designed to effectuate this subsection. (Texas Education Code Section 16.104(n))

Statutory Citations

Federal

Reg. 300.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with Reg. 300.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A))

Statutory Citations

Federal

Reg. 300.349 Individualized education program--accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a)(5), (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

Statutory Citations

Federal

Reg. 300.360 Use of local educational agency allocation for direct services.

(a) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, if the local educational agency, in any fiscal year:

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of Regs. 300.220-300.240;

(3) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(4) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(5) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements of paragraph (a) of this section, the State educational agency may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements under Regs. 300.182-300.186 do not apply to the State educational agency.

(20 U.S.C. 1411(c)(4); 1413(b); 1414(d))

Comment. Section 300.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under Part B.

The State educational agency, as a recipient of Part B funds is responsible for insuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds.

If a local educational agency elects not to apply for its Part B entitlement, the State would be required to use those funds to insure that a free appropriate public education (FAPE) is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to insure that "FAPE" and the other requirements of the Act are met.

Moreover, if the local educational agency is the recipient of any other Federal funds, it would have to be in compliance with Subpart D of the regulations for section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84). It should be noted that the term "FAPE" has different meanings under Part B and section 504. For example, under Part B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under section 504, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *" Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.

Statutory Citations

Federal

Reg. 300.361 Nature and location of services.

The State educational agency may provide special education and related services under Reg. 300.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the least restrictive environment provision in Regs. 300.550-300.556 of Subpart E.

(20 U.S.C. 1414(d))

Statutory Citations

Federal

Reg. 300.370 Use of State educational agency allocation for direct and support services.

(a) The State shall use the portion of its allocation it does not use for administration to provide support services and direct services in accordance with the priority requirements under Regs. 300.320-300.324.

(b) For the purposes of paragraph (a) of this section:

(1) "Direct services" means services provided to a handicapped child by the State directly, by contract, or through other arrangements.

(2) "Support services" includes implementing the comprehensive system of personnel development under Regs. 300.380-300.388, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to a free appropriate public education for handicapped children.

(20 U.S.C. 1411(b)(2), (c)(2))

State

"(a)(1) Regional Education Media Centers shall be established and operated by Regional Education Service Centers under rules of the State Board of Education in order to furnish participating school districts with education media materials, equipment and maintenance, and educational services." (Texas Education Code Section 11.33(a)(1)

Statutory Citations

Federal

Reg. 300.371 State matching.

Beginning with the period July 1, 1978-June 30, 1979, and for each following year, the funds that a State uses for direct and support services under Reg. 300.370 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under Reg. 300.360.

(20 U.S.C. 1411(c)(2)(B), (c)(4)(B))

Comment. The requirement in Reg. 300.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

Statutory Citations

Federal

Reg. 300.372 Applicability of nonsupplanting requirement.

Beginning with funds appropriated for Fiscal Year 1979 and for each following Fiscal Year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under Reg. 300.706(a) of Subpart G for administration, direct services, or support services.

(20 U.S.C. 1411(c)(3))

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Statutory Citations

Federal

Reg. 300.380 Scope of system.

Each annual program plan must include a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which includes:

(a) The inservice training of general and special educational instructional, related services, and support personnel;

(b) Procedures to insure that all personnel necessary to carry out the purposes of the Act are qualified (as defined in Reg. 300.12 of Subpart A) and that activities sufficient to carry out this personnel development plan are scheduled; and

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.

(20 U.S.C. 1413(a)(3))

State

"(3) assess statewide personnel needs in all areas of specialization related to special education on a periodic basis and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;" (Texas Education Code Section 16.104(a)(3))

"(7) ensure that appropriately trained personnel are involved in the diagnostic and evaluation procedures operating in all local districts and that those personnel routinely serve on local district admissions, review, and dismissal teams;" (Texas Education Code Section 16.104(a)(7))

"(g) Certification standards for professional and paraprofessional personnel authorized in Subsections (e) and (f) of this section shall be developed by the commissioner, approved by the State Board of Education, and reviewed periodically. The standards shall be independent of certification or endorsement in other fields and shall include requirements for additional training and recertification as necessary." (Texas Education Code Section 16.104(g))

"(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following:

(8) a requirement for the continuing education and professional development of local school district staff providing special education services to the visually handicapped;

(10) a requirement that local school districts providing special education services to visually handicapped children develop procedures for assuring that staff assigned to work with the visually handicapped children have prompt and effective access directly to resources available through cooperating agencies in the area, through the Texas School for the Blind, through the Central Media Depository, the Comprehensive Diagnostic and Evaluation Center, sheltered workshops participating in the state program of purchases of blind-made goods and services, and related types of resources." (Texas Education Code Section 11.052(c)(8) and (10))

§89.226 Comprehensive System of Personnel Development.

(a) Regional education service centers.

(1) Each regional education service center shall provide a comprehensive system of personnel development which includes a regional plan for personnel development based on identified needs. This plan shall be reviewed and approved by the education service center special education advisory committee.

(2) The education service centers shall provide technical assistance to school districts in the development and implementation of personnel development plans.

(b) Local school districts. Each school district or cooperative shall establish a comprehensive system of personnel development which includes development of a plan to meet identified training needs. The special education personnel development plan shall be an integral part of the local district's or fiscal agent district's inservice education plan which is developed and filed with the Texas Education Agency in accordance with §149.23 of this title (relating to The Inservice Education Plan).

(c) Visually handicapped. The plan required in subsection (b) of this section shall include provision for continuing education and professional development of school district staff providing special education services to the visually handicapped.

Statutory Citations

Federal

Reg. 300.381 Participation of other agencies and institutions.

(a) The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including representatives of handicapped, parent, and other advocacy organizations) in the state which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.

(b) The annual program plan must describe the nature and extent of participation under paragraph (a) of this section and must describe responsibilities of the State educational agency, local educational agencies, public and private institutions of higher education, and other agencies:

(1) With respect to the comprehensive system as a whole, and

(2) With respect to the personnel development plan under Reg. 300.383.

(20 U.S.C. 1412(7)(A); 1413(a)(3))

Statutory Citations

Federal

Reg. 300.382 Inservice training.

(a) As used in this section, "inservice training" means any training other than that received by an individual in a full-time program which leads to a degree.

(b) Each annual program plan must provide that the State educational agency:

(1) Conducts an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State; and

(2) Initiates inservice personnel development programs based on the assessed needs of Statewide significance related to the implementation of the Act.

(c) Each annual program plan must include the results of the needs assessment under paragraph (b)(1) of this section, broken out by need for new personnel and need for retrained personnel.

(d) The State educational agency may enter into contracts with institutions of higher education, local educational agencies, or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations), to carry out:

(1) Experimental or innovative personnel development programs;

(2) Development or modification of instructional materials; and

(3) Dissemination of significant information derived from educational research and demonstration projects.

State

(6) ensure the availability of sequentially related, field-based, inservice special education training programs for regular and special educators serving handicapped students and further ensure that all local districts dedicate at least the equivalent of one full day of their required inservice program per school year to that special education inservice training for those personnel; (Texas Education Code Section 16.104(a)(6))

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills);

(2) The involvement of local staff; and

(3) The use of innovative practices which have been found to be effective.

(f) Each annual program plan must:

(1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (f)(2) of this section;

(5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewide, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel);

(6) Specify: (i) The funding sources to be used, and (ii) The time frame for providing it; and

(7) Specify procedures for effective evaluation of the extent to which program objectives are met.

(20 U.S.C. 1413(a)(3))

Statutory Citations

Federal

Reg. 300.383 Personnel development plan.

Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and inservice education needs;

(b) Describe the results of the needs assessment under Reg. 300.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas; and

(c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers).
(20 USC 1413(a)(3))

Statutory Citations

Federal

Reg. 300.384 Dissemination.

(a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent, handicapped, and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and

(3) Use of instructional materials and other media for personnel development and instructional programming.

(20 U.S.C. 1413(a)(3))

Statutory Citations

Federal

Reg. 300.385 Adoption of educational practices.

(a) Each annual program must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.

(20 U.S.C. 1413(a)(3))

Statutory Citations

Federal

Reg. 300.387 Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development.

(20 U.S.C. 1413(a)(3))

Subpart D--Private Schools

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS
PLACED OR REFERRED BY PUBLIC AGENCIES

Statutory Citations

Federal

Reg. 300.400 Applicability of Regs. 300.401-300.403.

Regs. 300.401-300.403 apply only to handicapped children who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(20 U.S.C. 1413(a)(4)(B))

Statutory Citations

Federal

Reg. 300.401 Responsibility of State educational agency.

Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services:

(1) In conformance with an individualized educational program which meets the requirements under Regs. 300.340-300.349 of Subpart C;

(2) At no cost to the parents; and

(3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part); and

(b) Has all of the rights of a handicapped child who is served by a public agency.

(20 U.S.C. 1413(a)(4)(B))

State

"(k)The rules shall provide for approval of residential placement contracts only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. Either the whole or a part of a facility or program may be approved. Rules relating to the residential contract approval process shall include provisions designed to ensure that no contract is approved which:

(1) involves the delivery of unapproved services;

(2) involves the delivery of services which the district is capable of providing or is developing the capability to provide; or

(3) is not cost-effective when compared with other alternatives." (Texas Education Code Section 16.104(k))

§89.227 Contracting for Educational Placements for Handicapped Students.

(a) School districts, special education cooperatives, and regional education service centers may contract with approved nonpublic schools on a day or residential basis.

(b) Approved nonpublic schools for handicapped students include nonpublic school programs for students who reside with parent or guardian on a day-by-day basis and residential nonpublic school programs.

(1) Nonpublic school programs for students contracted on a day basis include mental health or mental retardation facilities or both under the jurisdiction of the Texas Department of Mental Health and Mental Retardation which have been in operation at least one year and private facilities which have been in operation for at least two years.

(2) Residential nonpublic school programs are private institutions which provide one or more of the required residential program services for which primary funding is not provided from other state or public sources and which have been in operation for at least two years under appropriate licensure or certification by the Texas Department of Human Resources or the Texas Department of Health or both.

(c) Day school placements. Facilities which intend to provide contractual educational services to handicapped students on a day basis shall be approved by the Texas Education Agency. Minimum standards will be met for health and safety, qualification and certification of personnel, administrative organization, appropriate education curriculum and programming, and financial stability in accordance with criteria specified in the monitoring document provided by the Texas Education Agency.

(d) Residential placements. School districts and special education cooperatives may contract for residential placement only with schools or facilities which are approved by the Texas Education Agency.

(1) School districts or special education cooperatives which intend to contract with facilities under this section shall notify the agency of their intent to contract for residential placements.

(2) Facilities which are approved for contracting as of the effective date of this section shall remain approved until the date already established for expiration of the approval (a maximum of two years).

(3) With the approval of the agency, the district may contract with the facility for the services listed in the contracted student's IEP.

(4) The Texas Education Agency will renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a request for residential placement from a school district or special education cooperative.

(5) If a facility which is not approved by the agency gets a request for placement from a local school district, the agency will begin approval procedures and make an on-site visit to the facility within two weeks after the agency has been notified by the local school district of the request for placement.

(e) All contract placements, day and residential, require prior approval by the Texas Education Agency.

(f) The school district or special education cooperative shall have the following responsibilites when making all contract placements, both residential and day:

(1) For each student, those services which the district or special education cooperative is unable to provide and which the facility is able to provide shall be listed in the student's IEP.

(2) The school district or special education cooperative shall make an on-site visit to verify that the facility can and will offer the services listed in the individual student's IEP and to ensure that the facility offers an appropriate educational program for the student.

(3) The placement of more than one student may be considered in the same on-site visit; however, the IEP of each student must be reviewed and a determination of appropriateness of placement and service must be made for each student.

(4) The appropriateness of the facility for each student being contracted shall be documentod in the IEP. General approval of a residential facility by the agency or general screening by a regional education service center is not sufficient to meet the requirements of this subsection.

(5) For each student, the school district or special education cooperative shall establish in writing criteria and estimated timelines for returning the student to the school district or cooperative.

(6) For all contract students, in the annual ARD review, the school district or special education cooperative shall verify:

(1) that the facility continues to meet minimum standards for health and safety;

(2) that continued contracting is needed and that the need is documented in the IEP; and

(3) that the facility continues to offer an appropriate program for the student.

(g) Contracts shall be negotiated on an individual student basis. A fee schedule for the maximum amount to be paid with state funds for education costs for contracted students shall be established by the commissioner of education. The commissioner of education shall review and amend the schedule as needed. Residential contracts may be paid from local, state, federal and other funds.

(h) School districts and special education cooperatives shall receive day contract funds as part of their regular Foundation School Program payments and must make payments to facilities on a regular basis.

(i) Nonpublic contract funds not expended during the school year must be reported and the excess shall be deducted from the following year's allocation.

(j) A district's or cooperative's total personnel units shall be adjusted for contract services in accordance with a formula developed by the commissioner of education and approved by the State Board of Education.

(k) School districts or special education cooperatives which contract for out-of-state residential placement shall do so in accordance with the rules for instate residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the Texas Education Agency.

(l) When a student who is on contract in one school district of residence moves to another Texas school district, and the student is to continue in the contract placement, the school district which negotiated the contract shall be responsible for the contract for the remainder of the school year.

Statutory Citations

Federal

Reg. 300.402 Implementation by State educational agency.

In implementing Reg. 300.401, the State educational agency shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them.

(20 U.S.C. 1413(a)(4)(B))

Statutory Citations

Federal

Reg. 300.403 Placement of children by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Regs. 300.450-300.460.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under Regs. 300.500-300.514 of Subpart E.

(20 U.S.C. 1412(2)(B); 1415)

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§89.228 Provision of Services for Students Placed by their Parents in Private Schools.

(a) When a handicapped child who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an ARD committee meeting to determine whether the district can offer to the student a free appropriate public education. If the district determines that it can, the district is not responsible for providing educational or related services to the student until such time as the parents choose to enroll the child in the public school full time or request services under the dual enrollment rule in subsection (f) of this section.

(b) All state requirements concerning referral, assessment, and determination of eligibility are applicable to students placed by their parents in private schools once the students have been referred to the local school district. All state requirements concerning special education services are applicable to students admitted under the dual enrollment rule in subsection (f) of this section.

(c) School districts shall use their established procedures and forms for the referral of students from private schools.

(d) To the maximum extent possible, the district shall use referral and assessment information from the private schools records in order to avoid unnecessary duplication of effort or services.

(e) The district shall provide to private school personnel the opportunity to participate in and provide information for the district's admission, review, and dismissal committee deliberations when the educational needs of private school students are being considered.

(f) If the ARD committee determines that a private school student is eligible and in need of special education instruction or related services or both, the parent may choose to enroll the student full time in the public school. If the parent does not choose to do this, the school district shall make the special education services available only on the basis of dual enrollment. Based on the services and amount of time needed to provide those services as set forth in each student's individual educational plan, when parents choose to enroll a child under the dual enrollment provision, the school district shall use one of the following arrangements for dual enrollment:

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(1) enroll the student for at least four consecutive hours per day and count the student for both full state ADA and full federal funding (in the annual child count);

(2) enroll the student for at least two consecutive hours per day and count the student for one-half state ADA and full federal funding; or

(3) enroll the student for any amount of time needed less than two hours per day and count the student only for full federal funding, but not for state ADA.

(g) The location and procedures for delivery of the instructional or related services or both specified in the IEP shall be determined based on the requirements concerning placement in the least restrictive environment and the policies and procedures of the local district.

(h) For students served under the provision of this section, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be equivalent to those provided for students enrolled only in the public school and shall remain the property of the school district.

(i) Students placed in a private school by parent choice shall not be eligible for state funded transportation services. The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the instruction or related service set forth in the IEP.

Statutory Citations

Federal

Reg. 300.450 Definition of "private school handicapped children."

As used in Regs. 300.451-300.452, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under Regs. 300.400-300.403.

[45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980.]

Statutory Citations

Federal

Reg. 300.451 State educational agency responsibility.

The State educational agency shall insure that--

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The other requirements in 34 CFR 76.651-76.663 of EDGAR are met.

[45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980.]

Statutory Citations

Federal

Reg. 300.452 Local educational agency responsibility.

(a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency.

(20 U.S.C. 1413(a)(4)(A); 1414(a)(6))
[Amended in 45 Fed. Reg. 22531 (April 3, 1980).]

Subpart E--Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

Statutory Citations

Federal

Reg. 300.500 Definitions of "consent," "evaluation," and "personally identifiable."

As used in this part: "Consent" means that: (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Evaluation" means procedures used in accordance with Regs. 300.530-300.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

"Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1415, 1417(c))

Statutory Citations

Federal

Reg. 300.501 General responsibility of public agencies.

Each State educational agency shall insure that each public agency establishes and implements procedural safeguards which meet the requirements of Regs. 300.500-300.514.

(20 U.S.C. 1415(a))

Statutory Citations

Federal

Reg. 300.502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in Regs. 300.562-300.569 an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(A))

State

Art. 6252-17a. Access by Public to Information in Custody of Governmental Agencies and Bodies

Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Texas that all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. To that end, the provisions of this Act shall be liberally construed with the view of carrying out the above declaration of public policy.

Statutory Citations

Federal

Reg. 300.503 Independent educational evaluation.

(a) General. (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs(b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with Reg. 300.301 of Subpart C.

(b) Parent Right To Evaluation At Public Expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under Reg. 300.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the aprent still has the right to an independent educational evaluation, but not at public expense.

(c) Parent Initiated Evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) Requests For Evaluations By Hearing Officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) Agency Criteria. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A))

Statutory Citations

Federal

Reg. 300.504 Prior notice; parent consent.

(a) Notice. Written notice which meets the requirements under Reg. 300.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) Consent. (1) Parental consent must be obtained before:

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) Procedures where parent refuses consent. (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2)(i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in Regs. 300.506-300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under Regs. 300.510-300.513.

(20 U.S.C. 1415(b)(1)(C), (D))

Comment. 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.

2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

Statutory Citations

Federal

Reg. 300.505 Content of notice.

(a) The notice under Reg. 300.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

§89.229 Notice Requirements and Complaint Procedures.

(a) General notice.

(1) The Texas Education Agency will develop a written document to be used for notifying handicapped students or the parent or guardian of handicapped students of their educational rights. This document shall be disseminated to all school districts, regional education service centers, and other agencies receiving special education funds.

(2) Agencies receiving special education funds shall provide a copy of the Texas Education Agency document for notification of rights to the parent of a student referred to special education for the first time for an individual comprehensive assessment, and to the student when appropriate. The document shall be provided at the time of referral.

(3) Local education agencies shall be responsible for explaining the document, for providing answers to questions pertaining to the document, and for providing to parents updated copies of the document, if any.

(4) The document shall be available in writing and on cassette tapes in English and Spanish, and in Braille.

(b) Specific notice.

(1) Local school districts must give parents specific written notice of definite meetings, dates, times, services, facts, actions concerning their children.

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraph (c)(1) and (2) of this section have been met.

(20 U.S.C. 1415(b)(1)(D))

(2) Except as provided in subsection (g) of §89.235 of this title (relating to General Program Requirements) concerning student discipline, specific notice shall be given a reasonable time prior to an ARD meeting. Reasonable time is defined as at least five school days; however, the parent may agree to an earlier meeting.

(c) Complaint procedures. The commissioner of education shall establish a procedure by which the Texas Education Agency shall collect information, respond to inquiry, act on complaints, assist in grievance matters, and engage in mediation in response to requests from the public, local school district, and other agencies receiving funds under this subchapter. This process shall include:

(1) receiving information concerning special education and analyzing the information in conjunction with other information on file with the Texas Education Agency;

(2) responding to inquiries concerning special education services;

(3) taking appropriate action on substantial complaints;

(4) engaging in mediation activities; and

(5) providing information on the formal procedures available in the impartial hearing process (Subchapter D of Chapter 157 of this title (relating to Hearings Concerning Handicapped Students)).

Statutory Citations

Federal

Reg. 300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in Reg. 300.504(a)(1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1415(b)(2))

Comment. Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

COMPLAINT PROCEDURES OF THE STATE

§76.780 A State shall adopt written procedures.

(a) A state shall adopt written procedures for:

(1) Receiving and resolving any complaint that the state or a subgrantee is violating a federal statute or regulations that apply to a program;

(2) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the state determines that an on-site investigation is necessary.

(b) Sections 76.780-76.782 apply to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) Sections 76.780-76.782 do not apply to the program under Title I of the Elementary and Secondary Education Act.

(20 U.S.C. 1221e-3(a)(1))

§76.781 Minimum complaint procedures.

A state shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the state receives a complaint-

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the secretary to review the final decision of the state.

(20 U.S.C. 1221e-3(a)(1))

§76.782 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a state. The complaint must include-

(a) A statement that the state or a subgrantee has violated a requirement of a federal statute or regulations that apply to a program; and

(b) The facts on which the statement is based.

(20 U.S.C. 1221e-3(a)(1))

§76.783 State educational agency action-- subgrantee's opportunity for a hearing.

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the state educational agency violated a state or federal statute or regulation:

(1) Ordering, in accordance with a final state audit resolution determination, the repayment of misspent or misapplied federal funds; or

(2) Terminating further assistance for an approved project.

(b) The procedures in §76.401(c)(2)-(7) apply to any request for a hearing under this section.

Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(20 U.S.C. 1231b-2)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

Statutory Citations

Federal

Reg. 300.507 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(20 U.S.C. 1415(b)(2))

Statutory Citations

Federal

Reg. 300.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F.)

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(20 U.S.C. 1415(d))

Statutory Citations

Federal

Reg. 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the decision under Reg. 300.510 or Reg. 300.511.
(20 USC 1415(c))

Statutory Citations

Federal

Reg. 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in Reg. 300.508 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under Reg. 300.512.

(20 U.S.C. 1415(c), (d); H. Rep. No. 94-664, at p. 49 (1975))

Comment. 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decisions on review.

2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in Reg. 300.508, relating to hearings, also apply.

Statutory Citations

Federal

Reg. 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under Reg. 300.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under Reg. 300.510 has the right to bring a civil action under Section 615(e)(2) of the Act.

(20 U.S.C. 1415)

Statutory Citations

Federal

Reg. 300.512 Timeliness and convenience of hearings and reviews.

(a) The public agency shall insure that not later than 45 days after the receipt of a request for a hearing:

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review:

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(20 U.S.C. 1415)

Statutory Citations

Federal

Reg. 300.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(20 U.S.C. 1415(e)(3))

Comment. Reg. 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

Statutory Citations

Federal

Reg. 300.514 Surrogate parents.

(a) General. Each public agency shall insure that the rights of a child are protected when:

(1) No parent (as defined in Reg. 300.10) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) Duty Of Public Agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) Criteria For Selection Of Surrogates. (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills, that insure adequate representation of the child.

(d) Non-Employee Requirement; Compensation.

(1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as surrogate parent.

(e) Responsibilities. The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(B))

§89.230 Surrogate Parents.

In accordance with the criteria in federal regulations, the local education agency shall determine when surrogate parents are to be assigned and shall provide for their assignment.

PROTECTION IN EVALUATION PROCEDURES

Statutory Citations

Federal

Reg. 300.530 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Regs. 300.530-300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(20 U.S.C. 1412(5)(C))

State

"(a) Before a pupil is assigned to a special education class he shall be given verbal or nonverbal individual intelligence tests in the primary home language in which the pupil is most fluent and has the best speaking ability and capacity to understand. The tests shall be selected from a list approved by the State Board of Education.

(b) No school district may assign a pupil to a special education class on the basis of intelligence tests administered in a language other than the primary home language of the child." (Texas Education Code Section 21.911(a) and (b))

§89.231 Child Identification.

Each school district and regional education service center shall maintain a system for identifying handicapped children who are in need of special education which must include, but need not be limited to, the following:

(1) a system of public awareness to inform the public of educational opportunities available to the handicapped; and

(2) a Child Find and Serve program coordinated by the education service centers, including a system for processing referrals and a listing of resources available to serve handicapped students.

§89.232 Referral for Comprehensive Assessment.

(a) Referral of students for possible special education services shall be a part of the district's overall regular education referral or screening system.

(b) In order to refer a student for comprehensive individual assessment, the following information must be submitted in writing with the referral to special education:

(1) the student's current educational status, including attendance records, grades and achievement data, student's use of the English language, and classroom observation;

(2) results of the home language survey conducted in accordance with Texas Education Code §21.455(a)(1), if any;

(3) documentation of previous educational efforts and strategies provided for the student and the results of those efforts, including participation in or consideration for other special programs operated by the district;

(4) documentation of recent vision and hearing screening, including available reports from evaluations done by vision or hearing specialists as follow-up to the screening;

(5) an updated general health history inventory or documentation from recent medical evaluations identifying health or medical conditions that may be affecting the student's current educational achievement; and

(6) information reported or provided by parents, including the language spoken in the home.

(c) The recommendation of the language proficiency assessment committee (established under Texas Education Code §21.462) shall be included in the data for all limited English proficient students.

(d) Special education personnel may be involved in collecting referral data for the following students:

(1) pre-kindergarten students;

(2) multiply handicapped (severely and profoundly handicapped); and

(3) eligible handicapped students new to the district.

Statutory Citations

Federal

Reg. 300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special educational program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of Reg. 300.532.

(20 U.S.C. 1412(5)(C))

§89.233 Comprehensive Individual Assessment.

(a) Timeline. The comprehensive individual assessment, including a written report, shall be completed within 30 school days from the date a referral is received by special education.

(b) Purpose. The purpose of the comprehensive individual assessment is to:

(1) determine the presence or absence of a physical, mental, or emotional disability which may be contributing to a student's educational need;

(2) determine the presence or absence of a significant educational deficit requiring special education instructional services; and

(3) identify specific learning competencies in instructional and related service areas.

(c) Documentation. The school district shall maintain documentation concerning the comprehensive individual assessment and the personnel responsible for the assessment, in accordance with federal regulations governing evaluation procedures.

(d) Special provisions.

(1) For students who have been referred for consideration as speech handicapped only, pregnant, homebound or hospitalized, the district shall not be required to perform the full indepth assessment described in federal regulations and in subsections (e) - (h) of this section.

(2) For pregnant students, homebound or hospitalized students who have no prior history of a handicapping condition or need for special education, the information collected at the time of referral may be determined by the admission, review, and dismissal committee to be sufficient. The ARD committee may request additional information if necessary for its deliberations.

(3) For students referred as speech handicapped only, the assessment shall be performed and documented by a certified speech therapist. All of the areas listed in subsection (b) of this section shall be addressed in the assessment; however, the depth of the assessment to be performed for each area shall be determined by the local school district. The written report of assessment shall include the level of severity of the impairment as determined by local procedures and shall state how the communication disorder affects the student's performance in the classroom resulting in an educational need for speech therapy services.

(4) Assessment of very young or severely handicapped students in accordance with this section may not be possible. The professionals responsible for assessing such students must document the rationale for deviating from the standard procedures as well as the results of the assessment. When a student's physical, mental or emotional deficits are so severe as to make usual assessment impossible, the written report must specify the nature and extent of the disability. Such a condition would represent a significant educational need. The educational assessment of such a student may be limited to competency based or criterion referenced measures.

State

"(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following:

(1) adequate provision for comprehenisve diagnosis and evaluation of each school-age child having a serious visual impairment;" (Texas Education Code Section 11.052(c)(1))

"(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized written service plan which:

(1) shall be developed following adequate diagnosis and evaluation of all pertinent medical, psychological, social, cultural, environmental, and related factors which bear on the individual's ability to benefit from educational programs;" (Texas Education Code Section 11.052(e)(1))

(5) When considering students who are visually handicapped, a professional certified in the education of the visually handicapped shall be assigned to assist in:

(A) determining appropriate areas of assessment;

(B) developing or determining appropriate assessment techniques;

(C) conducting assessments when appropriate; and

(D) interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the handicap.

(6) When considering visually handicapped students from birth through age two, or deaf-blind students, the teacher of visually handicapped infants or the teacher of deaf-blind students, as appropriate, may perform the assignment in paragraph (5) of this subsection.

(e) Assessment of physical, mental, or emotional conditions.

(1) The written assessment report shall address the presence or absence of those symptoms or conditions included in the specific eligibility criteria for the handicapping conditions for which the student is being assessed. The report shall include the type and severity of the impairment and the functional implications for the educational process.

(2) The admission, review, and dismissal committee shall have sufficient information to determine whether or not the student is handicapped and in need of special education services.

(3) Assessment of physical, mental, and emotional conditions.

(A) Language dominance. When conducting a comprehensive individual assessment, the assessment team shall first determine the student's dominant language. This determination may be made through formal or informal assessment. All assessment instruments and procedures used under this paragraph must be administered in the student's dominant language. Where no bilingual examiner is available, an interpreter may be used.

(B) Areas to be considered. Assessment of physical, mental, and emotional conditions must include a consideration of the student's functioning in the following five areas: language, physical, emotional/behavioral, sociological, and intellectual. The professional responsible for assessing each area shall make professional judgments regarding the degree to which the assessment in each area is necessary. Specific eligibility criteria for the handicapping condition in question should indicate the minimum intensity of assessment needed in each area, but all five areas must be addressed in the written report to the admission, review, and dismissal committee.

(C) Language. The assessment of an individual's language shall consist of a formal or informal assessment of language proficiency in both the expressive and receptive domains, such as oral expression, listening comprehension, reading comprehension and written language, when appropriate.

(D) Physical. The assessment of an individual's physical factors (including psychomotor abilities) must consist of an examination of physical conditions which directly affect the student's ability to profit from the educational process. A general medical examination shall be required only when specified by eligibility criteria or when abnormal physical factors have been identified as part of the assessment of physical [illegible]. The health information collected during the re[illegible]cess shall be sufficient if a complete medical [illegible]on is not required by specific eligibility criteria and if there are no indications of need for further physical assessment.

(E) Emotional/behavioral. The assessment of an individual's emotional and behavioral factors shall consist of formally or informally identifying those characteristics manifested in in-school or out-of-school behavior or both which may influence learning. The assessment shall include behaviors relative to the handicap which may affect educational placement, programming, or discipline.

(F) Sociological. The assessment of an individual's sociological variables must consist of identifying the child's family and community environmental situation influencing learning and behavioral patterns. Students shall not be eligible for special education if the only deficiencies identified are directly attributable to a different cultural lifestyle or to their not having had educational opportunities.

(G) Intellectual. The assessment of an individual's intellectual functioning must include an assessment of verbal ability or performance or both. While the adaptive behavior of all students must be considered to some degree, formal measures of adaptive behavior shall be required only when a student is being assessed for mental retardation. Intellectual functioning should be the last factor assessed, since the student's performance in this area should be analyzed and interpreted in light of all the other data.

(f) Assessment of performance levels and competencies. The purpose of the assessment of educational performance is:

(1) to determine whether the student has academic, developmental, or behavioral deficits;

(2) to provide information about the student's strengths and weaknesses; and

(3) to identify the specific modifications of instructional content, setting, methods, or material required by the student to achieve and maintain satisfactory progress, including those that can only be provided through special education services and those adaptations necessary for the student's progress in regular classes.

(g) Components of assessment of performance levels and competencies. This assessment shall include criterion-referenced or curriculum-referenced assessment designed to aid in the development of the student's IEP. The assessment may also include:

(1) individually administered norm referenced measures designed to assess specific areas of educational functioning;

(2) the status of current academic performance in basic skills when it is expected that the student will continue to receive academic instruction in the regular classroom;

(3) group administered norm referenced measures; and

(4) developmental scales and behavioral observations.

(h) Assessment for related services, physical education, and vocational education. The following assessments shall be provided as appropriate:

(1) Assessment for related services shall include a written report demonstrating that the student meets the criteria for eligibility for the related service and establishing that the service is needed in order for the student to benefit from instruction. The report must include recommendations concerning the specific services to be offered.

(2) Assessment for adapted physical education may be performed by appropriately trained physical education or special education personnel.

(3) Vocational assessment.

(A) Each handicapped student's occupational preparation needs shall be considered at or before entry into high school.

(B) If a comprehensive review of the student's records indicates that a student may need specific consideration for vocational training, the assessment shall include vocational interest and aptitude tests, and information from teacher, parent, and student interviews. Information obtained should include attitudes, work habits, job readiness and behaviors.

(C) For handicapped students whose initial vocational assessment as defined in subparagraph (B) of this paragraph, does not yield measurable results or sufficient information for planning appropriate vocational training, additional assessment information shall be obtained through exploratory vocational experiences, work samples and observation of work behaviors. Observations made in industrial arts, occupational orientation, or other vocational programs may be used to provide part of this assessment data.

(D) A vocational education counselor or teacher shall review the vocational assessment data with the special education person responsible for the vocational assessment. A written recommendation for appropriate vocational program placement shall be developed cooperatively, signed by both representatives, and presented to the ARD committee.

Statutory Citations

Federal

Reg. 300.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producers;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(20 U.S.C. 1412(5)(C))

Comment. Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

State

"(a) Before a pupil is assigned to a special education class he shall be given verbal or nonverbal individual intelligence tests in the primary home language in which the pupil is most fluent and has the best speaking ability and capacity to understand. The tests shall be selected from a list approved by the State Board of Education.

(b) No school district may assign a pupil to a special education class on the basis of intelligence tests administered in a language other than the primary home language of the child." (Texas Education Code Section 21.911(a) and (b))

"(7) ensure that appropriately trained personnel are involved in the diagnostic and evaluation procedures operating in all local districts and that those personnel routinely serve on local district admissions, review, and dismissal teams;" (Texas Education Code Section 16.104(a)(7))

"(o) To carry out legislative intent and the objectives of Subsection (n) and the following subsections of this Section 11.10, the Central Education Agency shall employ a director and assistant director of services to the deaf. The director of services to the deaf shall develop and administer a comprehensive statewide plan for deaf education services including continuing diagnosis and evaluation, counseling and teaching, and designed to accomplish the following objectives: . . . .

(6) Recognizing the need for development of oral communications abilities in deaf children and the ability of many to achieve high educational excellence through that method, but also recognizing the inability of some to gain their education successfully by this means, the comprehensive plan developed by the director of services to the deaf will call for the use of methods of communication which will best meet the needs of each individual deaf child in this state, with each child to be examined thoroughly so as to ascertain his potential for communications through oral means. The director of services to the deaf may establish separate programs to accommodate diverse communication methodologies." (Texas Education Code Section 11.10(o)(6))

Statutory Citations

Federal

Reg. 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Insure that information obtained from all of these sources is documented and carefully considered;

(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in Regs. 300.550-300.554.

(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with Regs. 300.340-300.349 of Subpart C.

(20 U.S.C. 1412(5)(C); 1414(a)(5))

Comment. Paragraph (a)(1) includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to insure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multi-source requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

State

"(7) ensure that appropriately trained personnel are involved in the diagnostic and evaluation procedures operating in all local districts and that those personnel routinely serve on local district admissions, review, and dismissal teams;" (Texas Education Code Section 16.104(a)(7))

Statutory Citations

Federal

Reg. 300.534 Reevaluation.

Each State and local educational agency shall insure:

(a) That each handicapped child's individualized education program is reviewed in accordance with Regs. 300.340-300.349 of Subpart C, and

(b) That an evaluation of the child, based on procedures which meet the requirements under Reg. 300.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

(20 U.S.C. 1412(5)(c))

ADDITIONAL PROCEDURES FOR EVALUATING
SPECIFIC LEARNING DISABILITIES

Statutory Citations

Federal

Reg. 300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of Reg. 300.532, each public agency shall include on the multidisciplinary evaluation team:

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examination of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

[42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980.]

Statutory Citations

Federal

Reg. 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skill;

(v) Reading comprehension;

(vi) Mathematics calculation; or

(vii) Mathematic reasoning.

State

"(7) "Learning disabled students" means students:

(A) who demonstrate a significant discrepancy between academic achievement and intellectual abilities in one or more of the areas of oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, mathematics reasoning, or spelling;

(B) for whom it is determined that the discrepancy is not primarily the result of visual handicap, hearing impairment, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage; and

(C) for whom the inherent disability exists to a degree such that they cannot be adequately served in the regular classes of the public schools without the provision of special services." (Texas Education Code 16.104(c)(7))

§89.234 Learning Disabled Students: Criteria for Determining the Existence of a Severe Discrepancy Between Achievement and Intellectual Ability.

(a) The multidisciplinary assessment team shall determine whether a severe discrepancy between achievement and intellectual ability exists in accordance with the provisions in this section.

(b) The team shall determine the student's intellectual ability based on standardized intelligence tests, and shall determine the student's achievement level based on standardized achievement tests in areas in which the student has had appropriate learning experiences. The two sets of standardized scores shall be compared. The team shall find that a severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but where the student's assessed educational achievement in areas specified is more than one standard deviation below the student's intellectual ability. The team's report shall include a statement of the degree of discrepancy and the method of computation used in determining the severe discrepancy.

(c) When a student's educational performance is consistent with the student's assessed intellectual ability, the student shall not be eligible to be classified or served as learning disabled.

(d) If the student cannot be assessed in accordance with subsection (b) of this section because of the lack of appropriate assessment instruments, or if the student does not meet the criteria in subsection (b) of this section but the team believes a severe discrepancy exists, the team must document in its written report the area and basis for the determination that the student has a severe discrepancy. The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement found in:

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

[42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980.]

(1) data obtained from standardized assessment instruments;

(2) reports by parents;

(3) observation of the student's classroom performance;

(4) student work samples; and

(5) other items as needed.

Statutory Citations

Federal

Reg. 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

[42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980.]

Statutory Citations

Federal

Reg. 300.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980.)

LEAST RESTRICTIVE ENVIRONMENT

Statutory Citations

Federal

Reg. 300.550 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Regs. 300.550-300.556.

(b) Each public agency shall insure:

(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))

State

" . . The statewide design shall include, but may not be limited to, the provision of services primarily through local school districts and special education cooperatives, supplemented by a regional delivery structure. The commissioner of education shall . . .

(8) ensure that an individualized education plan for each handicapped student is properly developed, implemented, and maintained in the least restrictive environment which is appropriate to meet the student's educational needs;" (Texas Education Code Section 16.104(a)(8))

"(2) Enabling a majority or as many as may be practicable of deaf children to reside with their parents or guardians and be afforded compensatory education in their home school districts or in facilities of regional day school programs for the deaf; and

(3) Enabling deaf children who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting or to be accommodated five nights a week in foster homes or other residential school facilities provided for by the Central Education Agency in order that such children may attend a regional day school program for the deaf; and

(4) Enrolling in the Texas School for the Deaf at Austin or any other educational facility for the deaf as determined by the parents of deaf children only those children whose needs can best be met in that institution, designating the Texas School for the Deaf as the statewide educational resource for students to whom adequate educational opportunities are unavailable in local or regional programs; and

(5) Encouraging children enrolled in regional day school programs for the deaf who have demonstrated ability to do so to return to regular school classes on a part-time, full-time or trial basis. Supplemental aid from the regional day school program for the deaf shall be made available to such children."

(Texas Education Code Section 11.10(o)(2)(3)(4)(5))

§89.235 General Program Requirements.

(a) Each local school district has the responsibility for providing educational and related services to eligible students in the least restrictive environment.

(b) Handicapped students shall have the opportunity to participate in educational programs and activities with nonhandicapped students.

(c) The school district curriculum shall enable each handicapped student to acquire knowledge and skills in the basic areas of learning commensurate with the student's needs and abilities. These skills may be attained in the general program of instruction or in a program of special education instruction, as determined by the admission, review, and dismissal committee.

(d) Handicapped students shall have available an instructional day commensurate with that of nonhandicapped students. The admission, review, and dismissal committee shall determine the appropriate instructional setting and length of day for each student and these shall be specified in the student's individual educational plan.

(e) Procedures for counting the average daily attendance of handicapped students in various instructional settings shall be developed by the commissioner of education and included in the daily register for pupil attendance accounting.

(f) For handicapped students receiving speech therapy only, such services shall be classified as instruction. Speech therapy services shall be classified as related services when the student also receives other special education services.

(g) Minimum standards for three basic levels of suspension are as follows:

(1) Summary (emergency) suspension.

(A) Summary suspension is an emergency procedure for the temporary, immediate removal of a student from his or her regularly scheduled school program for a period not to exceed three school days.

(B) Summary suspension shall be used only when a student exhibits dangerous behavior, posing a physical threat to himself or herself or to others. The suspension may be effected immediately upon the decision of the designated building administrator; however, the district must make and document efforts to contact and notify the parent prior to the suspension.

(C) The student shall be given oral or written notice of charges against the student, an explanation of the evidence supporting such charges, and at least an informal opportunity for the student to present his or her evidence in rebuttal of the charges.

(D) The district shall not be obligated to provide educational services during the time of summary suspension.

(E) Summary suspension is intended to be used in emergency situations only and consecutive three-day summary suspensions are prohibited. Procedures for short-term or long-term suspensions shall apply in all other cases.

(2) Short-term suspension.

(A) Short-term suspension for a period of time not to exceed 10 school days may be effected for a handicapped student who poses an immediate physical threat to himself or herself or others, is destructive of school property, is demonstrating behaviors that are significantly disrupting the learning process for the student or for others, or is otherwise engaging in conduct which would warrant short-term suspension for a non-handicapped student under local policy. A qualified group of professionals consisting of at least the student's special education teacher, a special education or regular education support person, and the designated building administrator, must determine that the behavior in question was not related to the handicapping condition or inappropriate placement before short-term suspension may be effected. School officials are cautioned to be sure that the professionals making this determination are actually qualified to assess the behavior-handicap link for the student in question.

(B) The student shall be given oral or written notice of the charges against the student, an explanation of the evidence in support of such charges, and at least an informal opportunity for the student to present his or her evidence in rebuttal of the charges. The district shall make every effort to ensure that the student understands the charges and shall provide any assistance necessary for overcoming language barriers to communicating the student's version of the facts in the hearing.

(C) The school district shall not be required to provide any educational services to the student unless it has been previously documented by an ARD committee that failure to provide educational services would cause significant regression.

(D) The district must document efforts to contact the parent prior to the suspension.

(E) When a student is given summary or short-term suspension or both totalling 15 school days in any one scholastic year an ARD review of the student's IEP shall be conducted.

(3) Long-term suspension.

(A) Long-term suspension for a period of 11 days or more may be effected for a handicapped student who engages in conduct which would warrant long-term suspension for a non-handicapped student under local policy or state statute and whose behavior has been determined by an ARD committee not to be related to the handicapping condition or inappropriate placement.

(B) In determining whether a student's disruptive behavior was related to a student's handicapping condition, the ARD committee shall base its decision on current evaluation and assessment data and on review of the current IEP documentation rather than on established eligibility or previous ARD committee decisions. The team shall consider whether the student's behavior indicates the need for new assessment or evaluation data.

(C) Prior to a suspension for 11 days or more, the student shall be entitled to due process, including a hearing before the local board of trustees or its designee. At that local hearing, the student may be represented by counsel, and may confront and cross examine witnesses and present witnesses and evidence in his or her own behalf. The district shall make every effort to ensure that the student understands the charges and shall provide any assistance necessary for overcoming language barriers to communicating the student's version of the facts in the hearing.

(D) The suspension shall be effected for a set period of time not to exceed the end of the current school term. The ARD committee shall determine the educational services to be provided during the time of suspension. The student's IEP shall include goals and objectives designed to assist in returning the student to school.

(E) If the ARD committee determines that the student's disruptive behavior is related to the handicapping condition or inappropriate placement, the student shall not be suspended. If the disruptive behavior on the part of the student indicates an inapppropriate placement, the ARD committee shall review the placement and consider alternatives.

(4) A local district may establish options or alternatives to suspension such as special assignment centers. A handicapped student may be placed in a special assignment center in accordance with specifications on his or her IEP, or in place of a short-term suspension subject to the procedures for short-term suspension. Placement in a special assignment center for more than 10 consecutive days constitutes a change in placement.

(5) The provisions of subsection (d) of §89.222 of this title (relating to Parent Participation in ARD Committee Meetings) are applicable in circumstances arising under this section.

"A student is entitled to the benefits of the Foundation School Program if he is 5 years of age or older and under 21 years of age at the beginning of the scholastic year and has not graduated from high school. A child is not eligible for enrollment in the first grade unless he is at least six years of age at the beginning of the scholastic year or has been enrolled in the first grade in the public schools in another state prior to transferring to a Texas public school." (Texas Education Code Section 16.003)

"(b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.

(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such person or his parent or guardian or person having lawful control resides within the school district." (Texas Education Code Section 21.031(b)(c))

(6) The local district is not obligated to refer for special education assessment and evaluation a regular student who has been suspended for violation of school policy to determine if such student might be handicapped. However, local officials should be aware that persistent discipline problems or disruptive conduct exhibited by a student who has not previously been a discipline problem might warrant referral for evaluation and testing. Professional school district employees should make a referral whenever there exists a reasonable basis to believe that a student is handicapped. However, a suspended regular education student is not entitled to reinstatement to classroom and campus privileges pending any assessment and evaluation which is to be made during the term of the student's suspension.

(h) A handicapped student's secondary program shall terminate either with graduation or when the student no longer meets the age requirement for eligibility in Texas Education Code §16.104. A handicapped student who has not reached his or her 21st birthday on September 1 of a scholastic year shall be eligible for services through the end of that scholastic year or until graduation.

(1) Graduation constitutes a release from services and is a change in placement. A student may be graduated in either of the following circumstances:

(A) When the student has completed requirements specified in the IEP, the recommendation for graduation has been made by the ARD committee, and the parent or student, as appropriate, has given informed consent to graduation. For students unable to graduate according to subparagraph (B) of this paragraph services shall be resumed upon the request of the student or parent as appropriate until the student reaches the legal age at which services may be terminated.

(B) Upon the determination by the ARD committee that the student has satisfactorily completed the minimum academic credit requirements for graduation applicable to non-handicapped students.

(2) A school district may serve a person over the school age in accordance with the provisions of Texas Education Code §21.040.

Statutory Citations

Federal

Reg. 300.551 Continuum of alternative placements.

(a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services.

(b) The continuum required under paragraph (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under Reg. 300.13 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(20 U.S.C. 1412(5)(B))

State

"(5) flexibility on the part of the local school systems to meet the special needs of visually handicapped children through:

(A) specialty staff and resources provided by the local school district;

(B) contractual arrangements with other qualified agencies, either public or private;

(C) supportive assistance from regional service centers, field offices of the Central Education Agency, or adjacent school districts;

(D) short-term or long-term services through the Texas School for the Blind or related types of facilities or programs;

(E) other instructional and service arrangements approved by the agency; or

(F) any combination of the foregoing;" (Texas Education Code Section 11.052(c)(5))

§89.236 Special Education Cooperatives.

(a) Local school districts with less than 3,000 average daily attendance shall cooperatively operate their special education programs unless otherwise authorized by the commissioner of education. Approval to operate a program outside a cooperative shall be effective for one year. Districts wishing to continue to operate outside a cooperative must request reapproval annually.

(b) Member school districts of special education cooperatives shall establish a management board comprised of the superintendents of the member schools.

(c) One member district of the cooperative shall be designated as fiscal agent. The fiscal agent district must be accredited and must have grades kindergarten through 12. The regional education service center may serve as the fiscal agent. The fiscal agent shall be responsible for all financial matters on behalf of the cooperative including applications, reports, and accounting.

(d) The special education cooperative management board shall establish a schedule of regular meetings for the purpose of conducting and reviewing the administration and operation of the cooperative.

(e) Special education cooperatives shall have written rules approved by the management board and each member district board of trustees. The rules shall address all aspects of the cooperative administration and operation including but not limited to all matters relating to personnel, fiscal responsibilities, and programs.

(f) Each school district within the cooperative shall be responsible for employment and dismissal of personnel who serve only that district. Itinerant personnel serving cooperative schools shall be considered to be cooperative personnel but shall be governed by the general policies of the fiscal agent unless otherwise approved by the cooperative management board.

(g) Local school districts of any size may develop special purpose cooperatives to serve certain handicapped populations or to meet certain program needs.

(h) The management board of each cooperative is responsible for determining each member's share of allocated special education personnel units and other funds based on student needs of the cooperative as a whole. The special education verification report reflects each member's share of the total allocations including the percentage of shared time of itinerant and support staff and is signed by each superintendent to indicate agreement. Each district's total personnel unit allocation will be reduced by .275 for each special education personnel unit assigned as their share.

(i) Each school district reporting the attendance of its special education students will receive the current operating cost allotment for those students. Member districts are responsible for contributing a prorated share of the operating funds to the fiscal agent for the necessary maintenance of the cooperative. This amount should be determined by the management board of the cooperative.

§89.237 Regional Day School Program for the Deaf.

In accordance with Texas Education Code §11.10, local school districts shall have access to Regional Day School Programs for the Deaf operated by school districts at sites established by the commissioner of education. Any student who has a hearing impairment which severely impairs processing linguistic information through hearing even with recommended amplification and which adversely affects educational performance shall be eligible for consideration for the Regional Day School Program for the Deaf subject to the admission, review, and dismissal (ARD) committee recommendations.

§89.238 Regional Education Service Center Special Education Programs.

Each regional education service center shall have a special education program component. Activities and services shall be based on regional needs in accordance with the following priorities:

(1) General special education program and administrative technical assistance in:

(A) program planning, including personnel development and long range planning; and

(B) implementation of and compliance with state and federal law and regulations and follow-up technical assistance to local education agencies being monitored.

(2) Continued support to school districts in instructional program and curriculum development, including basic skills instruction and the development of alternatives to private residential placements.

(3) Technical assistance and training for teachers in the selection and use of instructional materials.

(4) Maintenance of a minimum child find/serve program including:

(A) referral and tracking of both school age and 0-3 age students;

(B) resource identification; and

(C) interagency coordination.

(5) Technical assistance and inservice training in support of local district direct service providers such as assessment and related service personnel.

(6) Direct and supportive services to visually handicapped students. A minimum of one staff member certified in the education of the visually handicapped shall be employed by each service center.

(7) Provide direct or supportive assistance or both to early childhood programs and to handicapped students in early childhood programs.

Public Law 922, 84th Congress (20 U.S.C. 101 and 102 as amended) relating to the establishment and operation of the American Printing House for the Blind is incorporated here by reference.

34 Code of Federal Regulations, Part 307 relating to centers and services for deaf-blind children is incorporated here by reference.

State

12.03. Textbooks for the Blind and Visually Handicapped.

"(a) The State Board of Education is authorized to acquire, purchase, and contract for, with or without bids, subject to rules and regulations adopted by the board, free textbooks recommended as suitable and usable as textbooks for the education of the blind and visually handicapped scholastics in the public school systems of this state in grades one to twelve inclusive. The board may also enter into agreements providing for the acceptance, requisition, and distribution of books and instructional aids pursuant to Public Law 922, 84th Congress, or as amended, for use by students enrolled in public or private non-profit schools. The agreements may include the purchase of textbooks for blind and visually handicapped students attending private, non-profit schools if no state funds except for administrative cost are involved.

(b) For purposes of this section, a blind and/or visually handicapped scholastic means and includes any pupil whose visual acuity is impaired to the extent that he is unable to read the print in regularly adopted textbooks used in the subject class.

(c) For purposes of this section, "textbook" means and includes books in Braille, large type or any other medium or any apparatus which conveys information to the scholastic or otherwise contributes to the learning process." (Texas Education Code Section 12.03(a)(b)(c))

§89.239 Other Special Program Provisions.

(a) In accordance with Texas Education Code §11.052, local school districts, in cooperation with education service centers when appropriate, shall provide specialized services to visually handicapped students (from birth) who have not reached their 21st birthday on September 1 of the current scholastic year in order for such students to succeed in local education settings. Specialized services shall be provided to visually handicapped infants birth through age two and their families. The program may be home-based or school-based or a combination. The program shall cooperate with programs provided by other agencies concerned with infants. Admission to the program shall be determined by the admission, review, and dismissal (ARD) committee of the school serving the student. When admitted into the program, the student shall be considered to be enrolled in the school system.

(b) Local school districts may have access to services at the Texas School for the Blind for eligible visually handicapped students and at the Texas School for the Deaf for eligible hearing impaired students according to admission and dismissal criteria cooperatively developed respectively by the Texas School for the Blind and Texas Education Agency and by the Texas School for the Deaf and the Texas Education Agency.

§89.240 Texas School for the Blind and Texas School for the Deaf.

(a) A local school district, through the admission, review, and dismissal process, may request the provision of services through the Texas School for the Blind or the Texas School for the Deaf provided that:

(1) the student is eligible for the services of the school from which services are being requested according to criteria cooperatively developed by the Texas School for the Blind and the Texas Education Agency or by the Texas School for the Deaf and the Texas Education Agency, as appropriate; and

(2) the student meets both of the following conditions:

(A) the student has needs for services which the local district cannot adequately meet in a local or regional program; and

(B) the student has long-term or short-term needs related to the nature of the student's handicapping condition which can appropriately be met through placement at the Texas School for the Blind or the Texas School for the Deaf.

(b) Local school districts which request the provision of services through the Texas School for the Blind or the Texas School for the Deaf shall comply with the following requirements:

(1) For each student, the district shall list those services in the student's IEP which the district is unable to provide and which the Texas School for the Blind or the Texas School for the Deaf is able to provide.

(2) The district shall make an on-site visit to verify that the Texas School for the Blind or the Texas School for the Deaf can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.

(3) The placement of more than one student may be considered in the same on-site visit; however, the IEP of each student must be reviewed and a determination of appropriateness of placement and service must be made for each student.

(4) For each student, the local district shall establish in writing criteria and estimated timelines for returning the student to the local school district.

(5) Evidence of compliance with the requirements of this section shall be submitted by the district to the Texas Education Agency in a form prescribed by the agency.

(c) Students shall be admitted to the Texas School for the Blind or the Texas School for the Deaf according to the admission, review, and dismissal process cooperatively developed by the Texas School for the Blind and the Texas Education Agency or the Texas School for the Deaf and the Texas Education Agency, as appropriate.

(1) Except as provided in subsection (e) of this section, unless otherwise specifically approved by the commissioner of education, only those students who have been referred to the Texas School for the Blind or the Texas School for the Deaf by the local district admission, review, and dismissal committee shall be eligible to be considered for placement.

(2) The Texas School for the Blind and the Texas School for the Deaf, through their admission, review, and dismissal committee process, shall determine eligibility of referred students and shall determine if the respective school is an appropriate instructional placement for that student.

(3) When a student is admitted to the Texas School for the Blind or the Texas School for the Deaf, a written cooperative agreement shall be developed between the school and the local school district of the student specifying the general responsibilities of each agency in the delivery of appropriate and mutually supportive services to the student.

(4) When a local school district admission, review, and dismissal committee recommends placement for a student at the Texas School for the Blind or the Texas School for the Deaf, but the admission, review, and dismissal committee of the Texas School for the Blind or the Texas School for the Deaf fails to concur with the recommendation, the local school district may seek resolution in accordance with procedures established by the commissioner of education.

(d) For students placed in the Texas School for the Blind or the Texas School for the Deaf by local districts or state agencies, the annual admission, review, and dismissal review shall verify:

(1) that such placement is still needed and that the need is documented in the IEP; and

(2) that the Texas School for the Blind or the Texas School for the Deaf continues to offer an appropriate program for the student.

(e) In addition to the students admitted under subsection (a) of this section, the Texas School for the Deaf may, subject to the provisions in this subsection, provide educational services on a day or residential basis to hearing impaired students who have not been referred by local admission, review, and dismissal committees.

(1) Referrals from local admission, review, and dismissal committees as described in subsection (a) of this section shall be processed from March 1 to August 15 each year. These referrals must be received by July 1 and a determination regarding placement must be made within 45 calendar days. Emergency referrals by state agencies and local ARD committees may be made after the normal enrollment period and shall be acted upon by the Texas School for the Deaf within 45 calendar days.

(2) In order to ensure that sufficient resources are maintained for emergency referrals from state agencies and school districts after the normal March 1 to July 1 referral period, the governing board of the Texas School for the Deaf shall determine, with the approval of the commissioner of education, the extent of resources to be held in reserve for such emergency referrals. The amount of this reserve shall be reviewed annually and adjusted as necessary to ensure that no emergency referrals by state agencies and school districts are denied due to insufficient resources.

(3) Referrals from parents or legal guardians not processed through local ARD committees may be accepted by the Texas School for the Deaf throughout the school year. Admission of these students will occur after acceptance of students referred by the local ARD committees during the March 1 to July 1 referral period and shall be contingent upon availability of sufficient resources to provide a free appropriate education to such children while maintaining sufficient resources to accommodate referrals from state agencies and school districts.

(4) Students enrolled in the Texas School for the Deaf under this section who are not referred by local ARD committees shall not be counted by local districts for funding purposes. Local districts shall not be responsible for free appropriate education and related services for such children but such responsibility shall be incumbent on the Texas School for the Deaf upon enrollment of children not referred by local ARD committees.

§89.241 Other Program Options.

(a) Other program options which may be considered for the delivery of special education services to handicapped students may include the following:

(1) contracts with other school districts; and

(2) other program options as approved by the Texas Education Agency.

(b) The ARD committee shall develop a plan to facilitate the return of the student to the local educational system when out-of-district placement occurs.

Statutory Citations

Federal

Reg. 300.552 Placements.

Each public agency shall insure that:

(a) Each handicapped child's educational placement:

(1) Is determined at least annually,

(2) Is based on his or her individualized education program, and

(3) Is as close as possible to the child's home;

(b) The various alternative placements included under Reg. 300.551 are available to the extent necessary to implement the individualized education program for each handicapped child;

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

(20 U.S.C. 1412(5)(B))

Comment. Reg. 300.552 includes some of the main factors which must be considered in determining the extent to which a handicapped child can be educated with children who are not handicapped. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to insure that each handicapped child receives an education which is appropriate to his or her individual needs.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104--Appendix, Paragraph 24) includes several points regarding educational placements of handicapped children which are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her need * * *."

2. With respect to placing a handicapped child in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subject.

State

"(b) As used in this section:

(1) "Special services" means:

(A) "special teaching," which may be provided by professional and paraprofessional personnel in the following instructional settings:

(i) resource room;

(ii) self-contained classroom, regular or special campus;

(iii) hospital or community class;

(iv) homebound or bedside;

(v) speech or hearing therapy class." (Texas Education Code Section 16.104(b)(1)(A))

§89.242 Instructional Arrangements and Settings.

(a) Each local school district or cooperative shall be able to provide services to handicapped students with special education personnel on an itinerant, helping teacher, resource, partially self-contained and self-contained basis in order to meet the special needs of handicapped students.

(b) Instructional settings for handicapped students may include the following:

(1) Regular education classes with special education supportive services, supplementary aids, or other special arrangements.

(2) Special education classes operated by the district on the district regular campus or on a special campus in the district.

(3) Special classes in a facility not operated by the district but in which district special education personnel are assigned to serve eligible handicapped students in the classes such as community classes or hospital classes.

(4) Occupational preparation programs including the following:

(A) vocational education;

(B) CVAE classes;

(C) VEH classes;

(D) VAC classes and on-job training:

(i) Students working part time shall receive a minimum of two hours of job-related and academic instruction per day.

(ii) Students working full time shall receive a minimum of one hour of job-related instruction per week.

(iii) When VAC travel is paid from local funds, job-related instruction may be offered through on-job supervision.

(iv) When VAC travel is paid from state or federal vocational education funds, job-related instruction shall be in a school facility.

(E) sheltered workshop, including a minimum of one hour of job-related instruction per day.

(5) Hospital bedside instruction for students who are expected to be confined for a minimum of four consecutive weeks as documented by the student's physician. The district may request a waiver of the four-week requirement from the commissioner of education.

(6) Homebound instruction for students who are expected to be confined for a minimum of four consecutive weeks as documented by the student's physician.

"(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following:

(4) methods to assure that visually handicapped children receiving special education services in local school systems receive, prior to being placed in a classroom setting or within a reasonable time thereafter, the compensatory skills training, communicative skills, orientation and mobility training, social adjustment skills, and vocational or career counseling required in order for such students to succeed in classroom settings and to derive lasting benefits of a practical nature from the education obtained in local school systems;

(7) provision for effective interaction between the visually handicapped child's classroom setting and his home environment, including provision for parental training and counseling either by local school personnel or by representatives of other organizations directly involved in the development and implementation of the individualized written service plan for the child;" (Texas Education Code 11.052(c)(4) and (7))

"(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized written service plan which:

(10) describes in detail the arrangements made to provide the blind or visually handicapped individual with orientation and mobility training, instruction in braille or use of large print, other training to compensate for serious visual loss, access to special media, and special tools, appliances, aids, or devices commonly utilized by individuals with serious visual losses." (Texas Education Code 11.052(e)(10))

"The Texas School for the Blind is constituted, funded, and operated for the following functions and purposes:

(1) to provide educational services on a residential basis to blind children and youth who, for whatever reasons, are unable to obtain adequate educational opportunities in their local communities;

(2) to provide short-term services to blind children and youth for the purpose of equipping such blind children and youth to be able to benefit from educational services available in their local communities;

(3) to serve multiply handicapped blind children and youth who cannot be effectively assisted through community programs, but whose developmental capacities are such that it may not be convincingly demonstrated that the children and youth should appropriately be admitted to residential institutions operated by the State Department of Mental Health and Mental Retardation;

(7) Home based instruction for the following:

(A) eligible handicapped students who are on long term suspension; and

(B) pre-kindergarten handicapped students whose developmental levels are such that they are not capable of participating in special education classes for early childhood.

(8) Other instructional settings approved by the Texas Education Agency.

(4) to serve as the primary catalyst within the State of Texas for promoting greater excellence and relevance in educational services for blind individuals;

(5) to serve as a resource to local school programs throughout the state in connection with the efforts of local school programs to serve blind and visually handicapped individuals effectively;

(6) to serve as a mechanism for training and ongoing staff development for those who are involved in providing educational and closely related services to blind or visually handicapped children and youth in local communities throughout the state;

(7) to serve as a research and demonstration facility through which new and improved methods of providing educational services are developed to meet the current and future educational needs of blind and visually handicapped children and youth and through which are developed new and innovative methods of applying the most advanced medical technology, scientific achievement, and psychological and social knowledge to solve the educational problems of blind and visually handicapped children or youth; and

(8) to cooperate with any and all other public or private organizations, as appropriate, in more effectively carrying out, through effective interagency coordination and vigorous interagency communication, those provisions of this code which relate to the education of the blind and visually handicapped, as well as those provision of closely related state statutes." (Texas Education Code Section 11.06)

"(i) The Texas School for the Deaf shall:

(1) provide educational services on a day or residential basis to deaf students for whom adequate educational opportunities are unavailable in their local or regional programs;

(2) provide short-term services to deaf students so that they may be better able to benefit from educational services available in their local communities;

(3) provide services for multiply handicapped deaf students who cannot be effectively assisted through community programs but whose developmental capacities are such that they should not be admitted to residential institutions operated by the Texas Department of Mental Health and Mental Retardation;

(4) be a primary resource to school districts for promoting excellence in educational services for hearing-impaired students;

(5) be a training and staff development resource for those at the community level who are involved in providing educational and related services to hearing impaired students; and

(6) be a research and demonstration facility to improve methods of providing educational services to meet the current and future needs of hearing-impaired students." (Texas Education Code Section 11.03(i))

Statutory Citations

Federal

Reg. 300.553 Non-academic settings.

In providing or arranging for the provision of non-academic and extra-curricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. 300.306 of Subpart C, each public agency shall insure that each handicapped child participates with nonhandicapped children in those services and activities to the maximum extent appropriate to the needs of that child.

(20 U.S.C. 1412(5)(B))

Comment. Reg. 300.553 is taken from a new requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[A new paragraph] specifies that handicapped children must also be provided non-academic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR Part 104 Appendix, Paragraph 24.)

State

"(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized written service plan which:

(11) sets forth the plans and arrangements made for contacts with and continuing services to the blind or visually handicapped individual during periods in which he might not be involved in school programs." (Texas Education Code Section 11.052(e)(11))

Statutory Citations

Federal

Reg. 300.554 Children in public or private institutions.

Each State educational agency shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to insure that Reg. 300.550 is effectively implemented.

(20 U.S.C. 1412(5)(B))

Comment. Under Section 612(5)(B) of the statute, the requirement to educate handicapped children with nonhandicapped children also applies to children in public and private institutions or other care facilities. Each State educational agency must insure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

State

"(k) Any local district, special education cooperative, or regional education service center may contract with any public or private facility, institution, or agency within or outside of this state for the provision of services to handicapped students under rules adopted by the State Board of Education." (Texas Education Code Section 16.104(k))

§89.243 Provision of Services for Students Residing in Intermediate Care Facilities for the Mentally Retarded in Texas.

(a) Prior to the initial enrollment of school age residents of an intermediate care facility for the mentally retarded (ICF/MR) in the public school system, the local school district in which the facility is located shall participate in planning efforts initiated by the facility to ensure that appropriate educational services will be available to prospective students.

(b) Each district in which an ICF/MR is located shall enter into a written cooperative agreement with the facility setting forth the general responsibilities of each agency in the delivery of appropriate and mutually supportive services to the eligible school age clients.

(c) Noncompliance with subsections(a) or (b) of this section shall not relieve any school district of its obligation to provide educational services to eligible students.

(d) In accordance with Texas Education Code §21.031, the board of trustees of a local school district in which an ICF/MR is located shall be responsible for verifying that each school age handicapped person residing in the ICF/MR is there for the primary purpose of receiving care, treatment, and habilitation and not for the primary purpose of attending the public free schools.

(e) The district shall use its established procedures and forms for the referral of clients from the ICF/MR.

(f) To the maximum extent possible, the district shall use referral and assessment information from the facility's client records in order to avoid unnecessary duplication of services.

(g) An individual educational plan shall be developed for each student by an ARD committee constituted in accordance with §89.221 of this title (relating to The Admission, Review, and Dismissal (ARD) Committee).

(h) The district shall provide facility personnel the opportunity to participate in and provide information for the district's admission, review, and dismissal (ARD) committee deliberations when the educational needs of facility residents are being considered. A representative of the facility may participate as a member of the ARD committee at the district's discretion or as the parent's designated representative. If an ICF/MR representative is not a member of the ARD committee, a facility representative shall be invited to attend the ARD committee meeting as a resource person.

(i) The district shall be responsible only for the provision of special education instruction for those students served at the ICF/MR pursuant to subsection (l) of this section. With respect to students served in a setting outside the ICF/MR, the district shall be responsible for the provision of special education instruction and transportation, and shall make available general school services, including, but not limited to, food service, school health services, and extracurricular activities, subject to any limitations set forth in a student's individual educational plan (IEP). The provision of these services as set forth in each student's IEP shall be in coordination with the ICF/MR's individual program plan (IPP) of active treatment. The individual program plan (IPP) is the responsibility of the ICF/MR facility and is generally defined to include the following services based on individual need:

(1) dental services;

(2) training and habilitation services;

(3) food and nutrition services;

(4) medical services;

(5) nursing services;

(6) pharmacy services;

(7) physical and occupational therapy services;

(8) psychological services;

(9) recreation services;

(10) social services; and

(11) speech pathology and audiology services.

(j) Notwithstanding the provisions of subsection (i) of this section, the district shall be responsible for providing any related service set forth in a student's individual educational plan (IEP) when such related service is not authorized in the general rules applicable to the operation of the statewide ICF/MR program and its funding mechanism.

(k) The district shall serve eligible school age clients in an ICF/MR certified by the Texas Department of Human Resources as a level I facility in instructional settings within the district and outside of the facility unless prior approval for a more restrictive setting has been granted by the Texas Education Agency. The ARD committee shall determine the length of the instructional day.

(l) For students in facilities designated by the Texas Department of Mental Health and Mental Retardation as level V or level VI facilities, the district shall establish procedures for the ARD committee to follow in determining whether a student may be instructed in a school district setting or whether the health and safety of the student preclude placement for instruction outside of the facility. In accordance with established procedures, the ARD committee shall determine the appropriate instructional setting and amount of instructional time for each student. Instruction may be given in an educational setting in the district or within the ICF/MR facility or may be hospital/bedside instruction in the facility. The ARD committee shall determine the length of the instructional day.

(m) When the district has determined that a student is to be instructed within the ICF/MR, provision of an appropriate instructional setting shall be the responsibility of the ICF/MR. The ICF/MR shall provide access to students for whom the individual instructional plan specifies hospital/bedside instruction.

(n) The district shall at all times be responsible for providing each child instruction in the least restrictive environment in accordance with that child's individual educational plan (IEP).

(o) If the local school board determines that the students in the facility are legal residents of that district in accordance with Texas Education Code §21.031, the average daily attendance (ADA) of the students may be counted. These personnel units will be subtracted from the total personnel unit allocation at the 0.275 weight.

(p) School districts in which intermediate care facilities for the mentally retarded (ICF/MR) are located may apply for supplemental special education personnel units to ensure the provision of appropriate instruction to eligible handicapped students residing at the facility. Students whose parents reside within the district where the ICF/MR is located are not eligible to be counted for the supplemental unit allocation. Only those students whose parents are Texas residents living outside the district where the ICF/MR is located are eligible to be counted for the supplemental unit allocation. These units shall be subtracted from the total personnel unit allocation at the 0.275 weight. Supplemental units shall be allocated as follows:

(1) One unit shall be allocated for every twelve eligible students in an ICF/MR designated as a level I facility.

(2) One unit shall be allocated for every nine eligible students in an ICF/MR designated as a level V facility.

(3) One unit shall be allocated for every six eligible students in an ICF/MR designated as a level VI facility.

(4) Fractional units shall be allocated on a pro rata basis.

		(q) Within funds available, school districts providing special education instruction for eligible handicapped students in intermediate care facilities for the mentally retarded may receive a supplemental allocation not to exceed $400 per student per school year for each eligible student whose parents are Texas residents living outside the district in which the ICF/MR is located. Applications for supplemental assistance shall be included with the district's special education application.
Statutory Citations Federal Reg. 300.555 Technical assistance and training activities. Each State educational agency shall carry out activities to insure that teachers and administrators in all public agencies: (a) Are fully informed about their responsibilities for implementing Reg. 300.550, and (b) Are provided with technical assistance and training necessary to assist them in this effort. (20 U.S.C. 1412(5)(B))	State "(6) ensure the availability of sequentially related, field-based, in-service special education training programs for regular and special educators serving handicapped students and further ensure that all local districts dedicate at least the equivalent of one full day of their required inservice program per school year to that special education in-service training for those personnel;" (Texas Education Code Section 16.104(a)(6))	
Statutory Citations Federal Reg. 300.556 Monitoring activities. (a) The State educational agency shall carry out activities to insure that Reg. 300.550 is implemented by each public agency. (b) If there is evidence that a public agency makes placements that are inconsistent with Reg. 300.550 of this subpart, the State educational agency: (1) Shall review the public agency's justification for its actions, and (2) Shall assist in planning and implementing any necessary corrective action. (20 U.S.C. 1412(5)(B))		

CONFIDENTIALITY OF INFORMATION

Statutory Citations

Federal

Reg. 300.560 Definitions.

As used in this subpart:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the types of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(20 U.S.C. 1412(2)(D); 1417(c))

State

Art. 6252-17a. Access by Public to Information in Custody of Governmental Agencies and Bodies

Declaration of Policy

Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Texas that all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. To that end, the provisions of this Act shall be liberally construed with the view of carrying out the above declaration of public policy.

Art. 6574b. Photographic duplication of public records; disposition of original records

Photographic duplication when necessary

Section 1. The Commissioners Court of any county in Texas, or the governing body of any political subdivision of Texas, may, at its discretion, order, authorize and provide for the duplication of all public records by photostatic, photographic, miniature photographic, film, microfilm or micro-photographic process which correctly and legibly copies and reproduces, or which forms a medium of copying or reproducing, such public records, when, in the judgment of a Commissioners Court, or of the governing body of any political subdivision of Texas, a necessity exists for the photographic duplication of said public records for the purpose of recording, preserving and protecting same, or for the purpose of reducing space required for filing, storing and safekeeping of same, or for any similar purpose.

Statutory Citations

Federal

Reg. 300.561 Notice to parents.

(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under Reg. 300.128 of Subpart B, including:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information.

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

State

Quality of materials

Sec. 2. All materials used in the photographic duplication of public records, as herein authorized, and all processes of development, fixation and washing of said photographic duplicates, shall be of quality approved for permanent photographic records by the United States Bureau of Standards.

Control and direction; approval

Sec. 3. The duplication of all public records, if ordered, authorized and provided for, as hereinabove provided, shall be under the control and direction of the officer who is responsible for the safekeeping and preservation of such public records, and all duplication of such public records shall be checked, approved and certified by such officer as to being correct and legible copies of the original records in his office.

(4) A description of all of the rights of parents and children regarding this information, including the rights under Section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(20 U.S.C. 1412(2)(D); 1417(c))

Filing of duplicates; destruction of original records

Sec. 4. Said photographic duplicates of all public records shall be placed in conveniently accessible files and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting and enlarging the same whenever requested during regular office hours. Whenever photographic duplicates of public records are so made, certified and placed, the original public records may be, by order of the Commissioners Court of the county, or of the governing body of any political subdivision of Texas, destroyed or otherwise disposed of, provided, however, that no original record shall be destroyed or otherwise disposed of unless or until the time for filing legal proceedings based on any such record shall have elapsed, and, in no event, shall any original public record be destroyed or otherwise disposed of until said public record is at least five (5) years old; and provided further, that notice of such proposed destruction or disposition of original public records shall first be given to the State Librarian, and if such records are, in his opinion, needed for the Texas State Library, they shall be transferred thereto in the manner provided in Article 5439, Revised Civil Statutes, 1925.

Destruction of certain records not authorized

Sec. 5. Nothing in this Act shall authorize the destruction or disposition of any deed record, deed of trust record, mechanic's lien record or any minute book of any Court or any minute book of any political subdivision of Texas.

Statutory Citations

Federal

Reg. 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(20 U.S.C. 1412(2)(D); 1417(c))

State

Duplicates deemed original records; transcript

Sec. 7. Said photographic duplicates of public records shall be deemed to be an original record for all purposes, including introduction in all Courts or administrative agencies. A transcript, exemplification, or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original.

Statutory Citations

Federal

Reg. 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.566 Fees.

(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under Reg. 300.568.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.570 Hearing procedures.

A hearing held under Reg. 300.568 of this subpart must be conducted according to the procedures under Reg. 99.22 of this title.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement under this part.

(b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title.

(c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Reg. 300.129 of Subpart B and Part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. Under Reg. 300.573, the personally identifiable information on a handicapped child may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b).

Statutory Citations

Federal

Reg. 300.574 Children's rights.

The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(20 U.S.C. 1412(2)(D); 1417(c))

Comment. Note that under the regulations for the Family Educational Rights and Privacy Act (45 CFR 99.4(a)), the rights of parents regarding education records are transferred to the student at age 18.

Statutory Citations

Federal

Reg. 300.575 Enforcement.

The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(20 U.S.C. 1412(2)(D); 1417(c))

Statutory Citations

Federal

Reg. 300.576 Office of Education.

If the Office of Education or its authorized representatives collect any personally identifiable information regarding handicapped children which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Commissioner shall apply the requirements of 5 U.S.C. Section 552a.(b)(1)-(2), (4)-(11); (c); (d); (e)(1); (2); (3)(A), (B), and (D), (5)-(10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title.

(20 U.S.C. 1412(2)(D); 1417(c))

Family Educational Rights and Privacy Act (20 U.S.C. 1232g)

Statutory Citations

Federal

Reg. 99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal program for which the Secretary of the U.S. Department of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

(20 U.S.C. 1230, 1232g)

Statutory Citations

Federal

Reg. 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

Statutory Citations

Federal

Reg. 99.3 Definitions.

As used in this Part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247 as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

(20 U.S.C. 1232g)

APPLICATION FROM SECRETARY OF INTERIOR

Statutory Citations

Federal

Reg. 300.260 Submission of annual application; approval.

In order to receive payments under this part, the Secretary of Interior shall submit an annual application which:

(a) Meets applicable requirements of Section 614(a) of the Act;

(b) Includes monitoring procedures which are consistent with Reg. 300.601; and

(c) Includes other material as agreed to by the Commissioner and the Secretary of Interior.

(20 U.S.C. 1411(f))

Statutory Citations

Federal

Reg. 300.261 Public participation.

In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with Regs. 300.280-300.284.

(20 U.S.C. 1411(f))

Statutory Citations

Federal

Reg. 300.262 Use of Part B funds.

(a) The Department of Interior may use five percent of its payments in any fiscal year, or $200,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.

(b) The remainder of the payments to the Secretary of the Interior in any fiscal year must be used in accordance with the priorities under Reg. 300.320-300.324 of Subpart C.

(20 U.S.C. 1411(f))

Statutory Citations

Federal

Reg. 300.263 Applicable regulations.

The Secretary of the Interior shall comply with the requirements under Subparts C, E, and F.

(20 U.S.C. 1411(f)(2))

PUBLIC PARTICIPATION

Statutory Citations

Federal

Reg. 300.280 Public hearings before adopting an annual program plan.

(a) Prior to its adoption of an annual program plan, the State educational agency shall:

(1) Make the plan available to the general public,

(2) Hold public hearings, and

(3) Provide an opportunity for comment by the general public on the plan.

(20 U.S.C. 1412(7))

Statutory Citations

Federal

Reg. 300.281 Notice.

(a) The State educational agency shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the public about:

(1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act,

(2) The availability of the annual program plan,

(3) The date, time, and location of each public hearing,

(4) The procedures for submitting written comments about the plan, and

(5) The timetable for developing the final plan and submitting it to the Secretary for approval.

(c) The notice must be published or announced:

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, and

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(20 U.S.C. 1412(7))

Statutory Citations

Federal

Reg. 300.282 Opportunity to participate; comment period.

(a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under Reg. 300.281.

(20 U.S.C. 1412(7))

Statutory Citations

Federal

Reg. 300.283 Review of public comments before adopting plan.

Before adopting its annual program plan, the State educational agency shall:

(a) Review and consider all public comments, and

(b) Make any necessary modifications in the plan.

(20 U.S.C. 1412(7))

Statutory Citations

Federal

Reg. 300.284 Publication and availability of approved plan.

After the Secretary approves an annual program plan, the State educational agency shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(20 U.S.C. 1412(7))

Subpart C--Services

FREE APPROPRIATE PUBLIC EDUCATION

Statutory Citations

Federal

Reg. 300.300 Timelines for free appropriate public education.

(a) General. Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

State

"(a) The commissioner of education, with the approval of the State Board of Education, shall develop, and modify as necessary, a statewide design for the delivery of services to handicapped children in Texas which includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all handicapped children between the ages of three and 21 by no later than September 1, 1980. The statewide design shall include, but may not be limited to, the provision of services primarily through local school districts and special education cooperatives, supplemented by a regional delivery structure." (Texas Education Code Section 16.104(a))

"Eligible handicapped students shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts..." (Texas Education Code Section 16.104(c))

§89.220 Age-ranges for Student Eligibility.

(a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible children who have reached their third birthday and have not reached their twenty-first birthday on September 1 of the current scholastic year.

(b) In accordance with Texas Education Code §§11.052 and 11.10, a free appropriate public education shall be available to visually handicapped students and hearing impaired students from birth.

(b) Age ranges 3-5 and 18-21. This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one:

(1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability.

(2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability.

(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to non-handicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168 p. 19 (1975))

Comment. 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under Reg. 300.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under Reg. 300.321.

2. In order to be in compliance with Reg. 300.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with Regs. 300.530-300.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

"Directory information" includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

(20 U.S.C. 1232g(b)(1))

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in Reg. 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

(20 U.S.C. 1232g(a)(3))

"Education records" (a) means those records which: (1) are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

<u>The term does not include</u>:

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Not disclosed to anyone other than individuals providing the treatment; Provided, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(20 U.S.C. 1232g(a)(4))

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or a student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(20 U.S.C. 1232g(a)(5))

Statutory Citations

Federal

Reg. 99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of Reg. 99.31(a)(8) does not otherwise affect the rights according to and the consent required of the eligible student by paragraph (a) of this section.

(20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or instituions from according to students rights in addition to those accorded to parents of students.

Statutory Citations

Federal

Reg. 99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of--

(1) Informing parents of students or eligible students of their rights under Reg. 99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with Reg. 99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without prior written consent of the parent of the student or the eligible student except as otherwise permitted by Regs. 99.31 and 99.37; the policy shall include, at least: (i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under Reg. 99.31(a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest," and (ii) a specification of the personally identifiable information to be designated as directory information under Reg. 99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by Reg. 99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in Reg. 99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

(20 U.S.C. 1232g(e) and (f))

Statutory Citations

Federal

Reg. 99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under Reg. 99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

(2) The right to file complaints under Reg. 99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

(20 U.S.C. 1232g(e))

Statutory Citations

Federal

Reg. 99.7 Limitations on waivers.

(a) Subject to the limitations in this section and Reg. 99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f)(1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

(20 U.S.C. 1232g(a)(1)(B) and (C))

Statutory Citations

Federal

Reg. 99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; Provided, That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(20 U.S.C. 1232g(a)(1))

Statutory Citations

Federal

Reg. 99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by Reg. 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(20 U.S.C. 1432g(1)(B))

Statutory Citations

Federal

Reg. 99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under Reg. 99.11;

(b) Explanations placed in the education record under Reg. 99.21 shall be maintained as provided in Reg. 99.21(d), and

(c) The record of access required under Reg. 99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(20 U.S.C. 1232g(f))

Statutory Citations

Federal

Reg. 99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under Reg. 99.21.

(20 U.S.C. 1232g(a)(2))

Statutory Citations

Federal

Reg. 99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with Reg. 99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

(20 U.S.C. 1232g(a)(2))

Statutory Citations

Federal

Reg. 99.22 Conduct of the hearing.

The hearing required to be held by Reg. 99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under Reg. 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(20 U.S.C. 1232g(a)(2))

Statutory Citations

Federal

Reg. 99.30 Prior consent for disclosure required.

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in Reg. 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

(U.S.C. 1232g(b)(1) and (b)(2)(A))

Statutory Citations

Federal

Reg. 99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is:

(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in Reg. 99.34;

(3) Subject to the conditions set forth in Reg. 99.35, to authorized representatives of:

(i) The Comptroller General of the United States,

(ii) The Secretary, or

(iii) State educational authorities;

(iv) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; Provided, That personally ide tifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,

(ii) To determine the amount of the financial aid,

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid;

(5) To state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This paragraph applies only to statutes which require that specific information be disclosed to

State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this paragraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; Provided, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the terms "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; Provided, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in Reg. 99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1))

Statutory Citations

Federal

Reg. 99.32 Record of requests and disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply:

(i) To requests by or disclosures to a parent of a student or an eligible student;

(ii) To requests by or disclosures to school officials under Reg. 99.31(a)(1);

(iii) If there is written consent of a parent, of a student or an eligible student, or

(iv) To requests for or disclosure of directory information under Reg. 99.37.

(c) The record of requests and disclosures may be inspected:

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in Reg. 99.31(a)(1) and (3).

(20 U.S.C. 1232g(b)(4)(A))
[41 FR 24670, June 17, 1976, as amended at 42 FR 4460, Jan. 25, 1977]

Statutory Citations

Federal

Reg. 99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under Reg. 99.31 with the understanding that the information will be redisclosed to other parties under that section; Provided, That the recordkeeping requirements of Reg. 99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under Reg. 99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(4)(B))

Statutory Citations

Federal

Reg. 99.34 Conditions for disclosure to officials of other schools or school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to Reg. 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under Reg. 99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; Provided, That the disclosure meets the requirements of paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1)(B))

Statutory Citations

Federal

Reg. 99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in Reg. 99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under Reg. 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in Reg. 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements.

(20 U.S.C. 1232g(b)(3))

Statutory Citations

Federal

Reg. 99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the students or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

(20 U.S.C. 1232g(b)(1)(1))

Statutory Citations

Federal

Reg. 99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in Reg. 99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

(20 U.S.C. 1232g(a)(5)(A) and (B))

OFFICE OF EDUCATION PROCEDURES

Statutory Citations

Federal

Reg. 300.580 Opportunity for a hearing.

The Secretary gives a State educational agency reasonable notice and an opportunity for a hearing before taking any of the following actions:

(a) Disapproval of a State's annual program plan under Reg. 300.113 of Subpart B.

(b) Withholding payments from a State under Reg. 300.590 or under Section 434(c) of the General Education Provisions Act.

(c) Waiving the requirement under Reg. 300.589 of this subpart regarding supplementing and supplanting with funds provided under Part B of the Act.

(20 U.S.C. 1232c(C); 1413(a)(9)

Statutory Citations

Federal

Reg. 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

(a) Under Sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, State and local educational agencies must insure that Federal funds provided under Part B of the Act are used to supplement the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds. Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the nonsupplanting requirement only applies to funds allocated to local educational agencies. (See Reg. 300.372.)

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement under Sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Secretary in writing. The Secretary then provides the State with a finance and membership report form which provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

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(1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children, and

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions, and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Secretary considers the information which the State provides under paragraph (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(g) The State may request a hearing under Regs. 300.580-300.583 with regard to any final action by the Secretary under this section.

(20 U.S.C. 1411(c)(3); 1413(a)(9)(B))

Subpart F--State Administration

STATE EDUCATIONAL AGENCY
RESPONSIBILITIES: GENERAL

Statutory Citations

Federal

Reg. 300.600 Responsibility for all educational programs.

(a) The State educational agency is responsible for insuring:

(1) That the requirements of this part are carried out; and

(2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency:

(i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and

(ii) Meets education standards of the State educational agency (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(20 U.S.C. 1412(6))

State

"(o) To carry out legislative intent and the objectives of Subsection (n) and the following subsections of this Section 11.10, the Central Education Agency shall employ a director and assistant director of services to the deaf. The director of services to the deaf shall develop and administer a comprehensive statewide plan for deaf education services including continuing diagnosis and evaluation, counseling and teaching, and designed to accomplish the following objectives:

(1) Assisting and counseling parents of children of any age whose hearing is determined by professionally acceptable evaluation to be nonfunctional for education purposes, such assistance and counseling to be provided in each of the regional day school programs for the deaf hereinbelow authorized, and admitting all children under 21 years of age whose hearing is determined by professionally acceptable evaluation to be nonfunctional for educational purposes to the regional day school programs for the deaf; . . . " (Texas Education Code Section 11.10(o)(1))

"(p) The Central Education Agency shall apportion the state into not more than eight nor less than five areas each furnishing a regional day school program for the deaf. Geographic areas of each regional day school program for the deaf may be revised by the Central Education Agency for betterment of education for the deaf. Activities of a regional day school program for the deaf may be conducted on more than one site. (Texas Education Code Section 11.10(p))

Comment. The requirement in Reg. 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children within each State. With respect to State educational agency responsibility, the Senate Report on P.L. 94-142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency.

Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (Senate Report No. 94 168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options which may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning State educational agency standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the State educational agency responsibility.

(3) State law, regulation, or policy designates the State educational agency as responsible for establishing standards for all educational programs for the handicapped, and includes responsibility for monitoring.

(4) State law mandates that the State educational agency is responsible for all educational programs.

(q) It is the intent of the legislature that local resources be utilized to the fullest practicable extent in the establishment and operation of the regional day school programs for the deaf. The Central Education Agency is authorized and expected to contract with any qualified public or private organization or qualified individuals for diagnostic, evaluation and instructional services or any other services incidental to the education of deaf children, including transportation and/or maintenance."

The Central Education Agency shall employ educational and other personnel, may purchase or lease real or personal property, may accept gifts or grants of real or personal property or services from any source, public or private, including independent school districts and any institution of higher learning in this state, for the purpose of establishing and operating regional day school programs for the deaf. (Texas Education Code Section 11.10(p) and (q))

"(t) To assure effective implementation of this Act the Central Education Agency shall upon the passage of this Act institute planning and research designed to accomplish the intent and objectives set forth herein including employment of personnel considered essential to meet the operational date specified for this Act." (Texas Education Code Section 11.10(t))

"(b) The Central Education Agency shall be responsible for:

(1) the development of standards and guidelines for all special education services for the visually handicapped which it is authorized to provide or support pursuant to the provisions of this code, including matters related to standards and accreditation;

(2) the supervision of such field offices as might from time to time be established to assist local school districts in serving visually handicapped children more effectively;

(3) the development and administration of special programs for children handicapped by both serious visual loss and serious hearing loss;

(4) the evaluation of special education services provided for visually handicapped children by local school districts and the approval or disapproval of state funding of such services; and

(5) the maintenance of effective liaison between special education programs provided for the visually handicapped by local school districts and related initiatives exerted by the State Commission for the Blind, the Department of Mental Health and Mental Retardation, the School for the Blind, and other related programs, agencies, or facilities as appropriate." (Texas Education Code Section 11.052(b))

"(9) adequate monitoring and precise evaluation of special education services provided to visually handicapped children through local school districts. . . ." (Texas Education Code Section 11.052(c)(9))

"(2) facilitate interagency coordination when state agencies other than the Central Education Agency are involved in the delivery of instructional or related services to handicapped students;" (Texas Education Code Section 16.104(a)(2))

"(5) allow the Central Education Agency to effectively monitor and periodically conduct site visits of all local districts to ensure that agency rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts are accurate and complete;" (Texas Education Code Section 16.104(a)(5))

USE OF FUNDS

Statutory Citations

Federal

Reg. 300.620 Federal funds for State administration.

A State may use five percent of the total State allotment in any fiscal year under Part B of the Act, or $200,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than the amount which the State may use under Reg. 300.704 or Reg. 300.705, as the case may be.

(20 U.S.C. 1411(b), (c))

Statutory Citations

Federal

Reg. 300.621 Allowable costs.

(a) The State educational agency may use funds under Reg. 300.620 of this Subpart for:

(1) Administration of the annual program plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children;

(3) Technical assistance to local educational agencies with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special education activities for handicapped children; and

(5) Other State leadership activities and consultative services.

(b) The State educational agency shall use the remainder of its funds under Reg. 300.620 in accordance with Reg. 300.370 of Subpart C.

(20 U.S.C. 1411(b), (c))

STATE ADVISORY PANEL

Statutory Citations

Federal

Reg. 300.650 Establishment.

(a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

§89.244 Advisory Committees.

(a) General provisions. Advisory committees shall be established to ensure public participation in the special education planning process.

(b) State-level advisory committee.

(1) The Continuing Advisory Committee for Special Education shall be the state advisory panel required by federal regulations and shall advise the Texas Education Agency on the education of handicapped children.

(c) If a State has an existing advisory panel that can perform the functions in Reg. 300.652, the State may modify the existing panel so that it fulfills all of the requirements of this subpart, instead of establishing a new advisory panel.

(20 U.S.C. 1413(a)(12))

(2) The committee shall have 17 members, representing the following:

(A) two handicapped individuals (one student and one adult);

(B) two teachers (one special education teacher and one regular teacher);

(C) five parents of handicapped students;

(D) two special education program administrators (one from a special education co-op and one from a single district);

(E) one superintendent of a local school district;

(F) one special education staff person from a regional education service center;

(G) one representative of another state agency which serves the handicapped;

(H) one representative from a college or university involved in training teachers for the handicapped;

(I) one representative of a private school serving handicapped students; and

(J) one representative currently active in vocational education for the handicapped.

(3) Committee members shall be appointed for three-year terms, five of the terms expiring in each of the first two years and six expiring every third year.

(4) Because a state advisory panel is required by federal regulations, no date will be specified in these rules for the abolition of the Continuing Advisory Committee for Special Education. In accordance with State Board of Education rules on advisory committees, the committee will be periodically reviewed and its composition or function modified as needed.

(c) Regional advisory groups. A regional advisory group shall be established by each regional education service center. The group shall be composed of professional personnel from school districts in the region and representatives from other public and private educational and related agencies which provide services for handicapped students.

(d) Local advisory committees.

(1) The school district or special education cooperative shall establish a local advisory committee to provide for public participation from those in the community concerned with educational programming for the handicapped including parents of handicapped students and handicapped individuals.

(2) The district may choose to use the local advisory committee as a vehicle for coordination with private schools and other agencies serving handicapped students, and for personnel development planning.

Statutory Citations

Federal

Reg. 300.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups:

(1) Handicapped individuals.

(2) Teachers of handicapped children.

(3) Parents of handicapped children.

(4) State and local educational officials.

(5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.

(20 U.S.C. 1413(a)(12))

Comment. The membership of the State advisory panel, as listed in paragraphs (a)(1)-(5), is required in section 613(a)(12) of the Act. As indicated in paragraph (b), the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having:

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and handicapped individuals);

(2) Broad representation within the consumer-advocate groups, to insure that the interests and points of view of various parents, advocates and handicapped individuals are appropriately represented;

(3) Broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of handicapped children, and (c) appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to insure that it (1) consults with and receives input from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

Statutory Citations

Federal

Reg. 300.652 Advisory panel functions.

The State advisory panel shall:

(a) Advise the State educational agency of unmet needs within the State in the education of handicapped children;

(b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under Section 618.

(20 U.S.C. 1413(a)(12))

Statutory Citations

Federal

Reg. 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under Reg. 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under Reg. 300.620 for this purpose.

(20 U.S.C. 1413(a)(12))

Subpart G--Allocation of Funds; Reports

ALLOCATIONS

Statutory Citations

Federal

Reg. 300.700 Special definition of the term State.

For the purposes of Regs. 300.701, 300.702, and 300.704-300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1411(a)(2))

Statutory Citations

Federal

Reg. 300.701 State entitlement; formula.

(a) The maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the average per pupil expenditure in public elementary and secondary schools in the United States.

(b) For the purposes of the formula in paragraph (a) of this section, the applicable percentage of the average per pupil expenditure in public elementary and secondary schools in the United States for each fiscal year is:

(1) 1978--5 percent,

(2) 1979--10 percent,

(3) 1980--20 percent,

(4) 1981--30 percent,

(5) 1982, and for each fiscal year after 1982, 40 percent.

(20 U.S.C. 1411(a)(1))

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(20 U.S.C. 1411(a)(4))

Statutory Citations

Federal

Reg. 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under Reg. 300.701 of this subpart, the Secretary may not count:

(1) Handicapped children in a State to the extent that the number of those children is greater than 12 percent of the number of all children aged five through 17 in the State; and

(2) [Reserved]

(3) Handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965

(b) For the purposes of paragraph (a) of this section, the number of children aged five through 17 in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

(20 U.S.C. 1411(a)(5))

Statutory Citations

Federal

Reg. 300.703 Ratable reduction.

(a) General. If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(20 U.S.C. 1411(g)(1))

(b) Reporting dates for local educational agencies and reallocations.

(1) In any fiscal year in which the State entitlements have been ratably reduced, and in which additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the State educational agency shall fix dates before which each local educational agency shall report to the State the amount of funds available to it under this part which it estimates it will expend.

(2) The amounts available under paragraph (a)(1) of this section, or any amount which would be available to any other local educational agency if it were to submit an application meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies, in the manner provided in Reg. 300.707, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(20 U.S.C. 1411(g)(2))

Statutory Citations

Federal

Reg. 300.704 Hold harmless provision.

No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977.

(20 U.S.C. 1411(a)(1))

Statutory Citations

Federal

Reg. 300.705. Within-State distribution: Fiscal Year 1978.

Of the funds received under Reg. 300.701 of this subpart by any State for fiscal year 1978:

(a) 50 percent may be used by the State in accordance with the provisions of Reg. 300.620 of Subpart F and Reg. 300.370 of Subpart C, and

(b) 50 percent shall be distributed to local educational agencies in the State in accordance with Reg. 300.707.

(20 U.S.C. 1411(b)(1))

Statutory Citations

Federal

Reg. 300.706 Within-State distribution: Fiscal Year 1979 and after.

Of the funds received under Reg. 300.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979:

(a) 25 percent may be used by the State in accordance with Reg. 300.620 of Subpart F and Reg. 300.370 of Subpart C, and

(b) 75 percent shall be distributed to the local educational agencies in the State in accordance with Reg. 300.707.

(20 U.S.C. 1411(c)(1))

Statutory Citations

Federal

Reg. 300.707 Local educational agency entitlements; formula.

From the total amount of funds available to all local educational agencies, each local educational agency is entitled to an amount which bears the same ratio to the total amount as the number of handicapped children aged three through 21 in that agency who are receiving special education and related services bears to the aggregate number of handicapped children aged three through 21 receiving special education and related services in all local educational agencies which apply to the Sta. educational agency for funds under Part B of the Act.

(20 U.S.C. 1411(d))

State

"(d)(1) Except as provided in Subdivision (2) of this subsection a school district is allocated 30 special education personnel units for the first 3,000 students in refined average daily attendance, one special education personnel unit for each additional 100 students in refined average daily attendance up to a total of 6,000 students in refined average daily attendance, and .85 special education personnel unit for each additional 100 students in refined average daily attendance thereafter. The units may be used only for personnel listed in Subsections (e) and (f) of this section.

FUNDING

§89.250 Special Education Personnel Unit Allocation.

(a) Special education personnel units shall be allocated in accordance with Texas Education Code §16.104 based on the preceeding year's refined average daily attendance (ADA). All allocations shall be subject to the availability of funds.

(b) In determining the percent of students served, only students receiving direct services from the district's special education instructional or related services personnel shall be counted.

(2) If less than 12 percent of the district's students are identified as eligible handicapped students and provided with special services by the district's special education personnel, the number of special education personnel units to which the district is entitled under Subdivision (1) of this subsection shall be reduced to a percent of full allocation based on the percent of students served according to the following schedule:

Percent served	Percent of full allocation
12%	100%
11%	94%
10%	88%
9%	82%
8%	76%
7%	70%
6%	63%

0-5% set by commissioner, not to exceed 56%

(3) The percent of students served is determined by dividing the number of identified and eligible handicapped students served by the district's special education personnel by the district's refined average daily attendance and rounding the dividend to the nearest 10th. A district that serves less than 12 percent of the students in refined average daily attendance is entitled to an increase in the percent of allocation for a percent of students served specified in the schedule above equal to one percent of full allocation for each additional one-tenth of one percent of the students served but not exceeding the allocation specified on the schedule for the next highest percent of students served." (Texas Education Code Section 16.104(d)(1)(2)(3))

"(4) Local districts may receive an additional allocation of $100 per personnel unit as a start-up allocation during the first year of a new unit's activation." (Texas Education Code Section 16.104(d)(4))

"(6) Each local district is entitled to a basic support allocation of $400 for each personnel unit activated under this section. Local districts may expend these funds to provide special instructional materials and related services or for consultant services, pupil evaluation services, or personnel travel in multicounty or multicity school districts in accordance with rules adopted by the State Board of Education." (Texas Education Code Section 16.104(d)(6))

(c) Students who have reached their third birthday and have not reached their 21st birthday on September 1 of the current scholastic year who participate in the Regional Day School Program for the Deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.

(d) Students from birth through age two who are visually handicapped or deaf or both and are served by the district shall be considered as eligible for ADA on the same basis as other special education students.

(e) If the value for all special education units employed in a district from Foundation School Program funds exceeds the amount allocated, the excess shall be charged to the district's total personnel unit allocation at the regular personnel unit value.

(f) The district's total personnel units shall be adjusted for special education personnel in accordance with Texas Education Code §16.102 (g) and §105.44 of this title (relating to Personnel Unit Adjustment for Special Education, Vocational Education, and School-Community Guidance Center Personnel).

(g) The school district will file a verification report as of the date established by the commissioner which gives the extent of special education programs and services activated. Authorized units will be reflected on the final application-foundation funds.

(h) To receive its full allocation, a program must identify and provide service to a number of handicapped students equal to at least 12% of its total refined ADA in the preceding school year. These data will be reflected on the superintendent's annual report.

§89.251 Basic Support Allocation.

(a) Support funds shall be allocated in accordance with Texas Education Code §16.104.

(b) Special materials, supplies, and equipment.

(1) Funds allocated under this section may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individual educational plans of handicapped students and which are not ordinarily purchased for the regular classroom. A special education resource system shall be in operation to ensure efficient and cost-effective use of funds for this purpose.

(2) Special materials shall include media packages, manipulative devices, teaching games, or items needed to provide related services.

(3) Special supplies shall include consumables but shall not include office supplies and routine classroom supplies. Consumables are defined as any type of instructional supplies that are used during a one-year period. Routine classroom supplies are defined as those regular supplies for classroom use purchased with an amount of funds equal to the average amount of funds spent for classroom supplies on a regular student.

(4) Special equipment shall include the following:

(A) adaptive equipment such as communication devices and special seating, and items needed for related services;

(B) audiovisual machines used to provide or improve instruction; and

(C) computers used only in special education student instruction.

(5) Items which would be placed in any regular classroom, such as desks, tables, chairs, bulletin boards, or blackboards, shall not be purchased with funds allocated under this section.

(c) Assessment. Funds allocated under this section may be used for materials and services required in the assessment process.

(1) Supplies for the assessment process may be purchased. Equipment may be purchased only if used directly with the students.

(2) Funds may be used to contract for consultants to provide direct assessment services to students.

(3) An aide (clerk) may be paid from assessment funds for that portion of time spent working directly in assessment.

(d) Other uses.

(1) A portion of the funds allocated under this section may be used to conduct planning, staff development, and program evaluation. When such funds are used to contract with a consultant, the district shall:

(A) document the amount paid;

(B) document that the consultant had the appropriate credential;

(C) maintain a record of service performed, the purpose of the service, and to whom the service was provided;

(D) maintain a written contract or agreement and evidence that a contract or agreement was signed prior to the service being offered and that the terms were carried out before payment was made;

(E) document that the services could not have been provided by an employee within the district;

(F) pay the consultant a fee rather than a salary;

(G) document that there was no conflict of interest in hiring the consultant; and

(H) document that any travel expenses paid the consultant did not exceed state rates and allowances.

"(5) In addition to all other allocations authorized in this section, any local district may receive supplemental special education personnel unit allocations through application by the district to the commissioner of education. The application shall include a thorough demonstration of the particular needs which justify the requested supplemental allocation. Under rules adopted by the State Board of Education, the commissioner may approve the allocations on a discretionary basis, having primary regard for those requests which demonstrate such circumtances as:

(A) an unusually high concentration of handicapped students or an unusually high concentration of severely handicapped students eligible to receive services required by law to be provided by the applicant district's personnel and to whom the actual demonstrated cost of providing an appropriate education to those students either individually or collectively overcomes the district's ability to meet those needs after a proper utilization of that district's allocations under this section;

(B) an unusual cost burden imposed on a rural school district due to the difficulty involved in serving handicapped students in sparsely populated areas; or

(2) The school district may engage the services of personnel listed under special education personnel (special education teachers, special education professional support personnel, special education related services professional personnel, special education paraprofessional personnel) on a student-by-student or family-by-family basis. The district shall maintain a record of the service performed, the purpose of the service, the recipient of the service, the time spent, and the cost. The services may be paid for from the special education basic support funds or from federal funds.

(3) Special education basic support funds may be used for transportation only to and from residential placements as defined in §89.217 of this title (relating to Related Services).

(e) Travel. Funds allocated under this section may be used for travel in accordance with this subsection.

(1) Special education staff shall be reimbursed in accordance with local district policies concerning in-district or out-of-district travel for all staff.

(2) Reimbursement paid from state or federal special education funds shall not exceed those rates established in the current regulations for travel for state employees. In districts where the reimbursement rates in local policy exceed the state rates, the difference must be paid from local funds.

(3) Funds allocated under this section shall only be used for out-of-district travel, except that personnel in special education cooperatives may be reimbursed for travel within the cooperative.

(4) Records shall be kept by the local district documenting mileage, destination, and the purpose of all travel paid from funds under this section.

(5) Funds allocated under this section may be used to pay travel of staff to attend meetings outside of the district for the purpose of improving performance in assigned positions. The purpose for attending must relate to the district's staff development plan and shall not include time spent in performing functions relating to professional organizations.

(f) Carry-over. The basic support allocation need not be expended during the school year in which the funds were allocated. Fund balances may be carried over and spent during subsequent years in special education.

§89.252 Supplemental Unit Allocations.

(a) Any local district or special education cooperative having a Texas Department of Human Resources approved facility within its boundaries with school-aged handicapped students in residence may apply to the commissioner of education for one or more supplemental special education personnel units to provide special education instruction to eligible handicapped students. The following students shall be eligible to be counted for supplemental units:

(1) Eligible handicapped students whose legal residence is in Texas but outside the district which is applying for the unit.

(2) Eligible handicapped students for whom the state is managing conservator.

(C) an unusual difficulty involved in the administration of a special education cooperative which indicates a need for additional support personnel." (Texas Education Code Section 16.104(d)(5))

"(7) Any personnel units allocated under this subsection but not utilized by the local district may be reallocated by the commissioner in the manner described in Subdivision (5) of this subsection." (Texas Education Code Section 16.104(d)(7))

"(e) Professional personnel for the operation and maintenance of a program of special education shall be:

(1) handicapped students' teachers, including itinerant teachers whose duties may or may not be performed in whole or in part on the campus of a school;

(2) special education related service personnel, including occupational therapists, physical therapists, nurses, orientation and mobility instructors, and other noneducational personnel who are otherwise professionally licensed by state or national certification recognized by the commissioner of education; and

(b) Handicapped students who generate education funds through other units of state government shall not be eligible to be counted for the allocation of supplemental personnel units under this section.

(c) Approved facilities for which supplemental units may be allocated are those which offer care, treatment, and habilitative services as a first priority but which do not offer approved educational programs.

(d) Supplemental personnel units for non-ICF/MR facilities shall be allocated for eligible handicapped students who are expected to reside in the facility a minimum of four consecutive weeks, as documented by an appropriate authority, in accordance with the following:

(1) One personnel unit shall be allocated for each six eligible handicapped students, except as provided in paragraphs (2) - (4) of this subsection.

(2) One personnel unit shall be allocated for each six eligible handicapped students served by South Texas ISD except for learning disabled and speech handicapped students for which units shall be allocated at one personnel unit for each 16 students. For transitional purposes, the commissioner is authorized to approve additional units for the 1983-84 school year.

(3) One personnel unit shall be allocated to Windham ISD for each 18 eligible handicapped students participating in the special education program based on the average monthly enrollment and reported on the superintendent's annual report.

(4) One personnel unit shall be allocated for each 16 learning disabled students.

(5) One personnel unit shall be allocated for each 20 pregnant students.

(e) Students served by supplemental units allocated under this section may be included in the average daily attendance of the district in the same way as all other special education students.

(f) School districts in which ICF/MR's are located may apply for supplemental special education personnel units in accordance with §89.243 of this title (relating to Provision of Services for Students Residing in Intermediate Care Facilities for the Mentally Retarded in Texas).

§89.253 Special Education Personnel.

(a) A minimum of 80 percent of the special education personnel units allocated shall be used for direct service personnel, including aides. This does not include directors, supervisors, or assessment personnel. In unusual circumstances, application may be made to the Texas Education Agency for waiver of this requirement for one school year. The waiver may be renewed upon demonstration of continued need.

(3) special education support personnel, including special education directors, special education supervisors, special education counselors, special education visiting teachers, psychologists, educational diagnosticians, and other pupil evaluation specialists." (Texas Education Code Section 16.104(e))

"(f) Paraprofessional personnel for the operation and maintenance of a program of special education shall consist of persons engaged as teacher aides, who may or may not hold a teacher certificate." (Texas Education Code Section 16.104(f))

"(h) Except as provided by Subsection (i) of this section, the minimum salary levels, months of service, and personnel unit values for all authorized personnel shall be determined by the provisions of Section 16.056 of this code. If positions authorized in this section are not specifically provided for in Section 16.056, the commissioner shall add those positions to the Texas Public Education Compensation Plan in accordance with Subsection (e) of Section 16.056 of this code.

(i) Special education unit personnel may be employed on a full-time, part-time, or consultative basis. Any school district may, with the commissioner's approval, utilize its personnel unit allocations to employ authorized personnel on a 10-, 11-, or 12-month basis in accordance with rules adopted by the State Board of Education. Handicapped students' teachers, paraprofessional personnel, or related service personnel employed on an extended basis under this subsection shall, during the extended period of their contract, only be engaged in pupil evaluations or in direct service delivery to handicapped students for which the disruption of continuous services may result in severe regression." (Texas Education Code Section 16.104(h)(i))

"(j) In accordance with rules adopted by the State Board of Education, local districts may jointly operate their special education programs. Personnel units and other funds to which the cooperating districts are entitled under this section may be allocated to the districts jointly as cooperative units or cooperative funds in accordance with the cooperative districts' agreement." (Texas Education Code Section 16.104(j))

"(l) Except as provided by Subsection (m) of this section, contracts for residential placements when approved may be paid for from a combination of federal, state, and local funds. The local share of the total contract cost per pupil is that portion of the local tax effort (total dollars generated by debt service and maintenance taxes) which exceeds the district's local fund assignment, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that which remains after subtracting the local share. If the contract involves a public facility other than a program or facility administered by the Central Education Agency, the state share is that which remains after subtracting the local share from that portion of the contract which involves the costs of instructional and related services. If the contract involves a program or facility administered by the Central Education Agency, there is no state share paid from this program." (Texas Education Code Section 16.104(l))

(b) School districts and cooperatives may designate one of their supervisory personnel as a special education director. The special education director may be placed on a 12-month contract. The local district may place the director on any pay grade from grade 10 to one below that of the superintendent. Special education directors in cooperative programs may be placed on any pay grade from grade 10 to one pay grade below that of the fiscal agent superintendent. The management board of the cooperative shall determine the pay grade for the director.

(c) Special education cooperatives shall receive a supplemental allocation of one aide II for administrative purposes. The aide may be placed on a 10-, 11-, or 12 month contract at the discretion of the district.

(d) In addition to the director and cooperative aide, a school district may employ teachers, aides, professional support staff, and related service personnel on extended contracts to a maximum of 10 percent of the district's total special education personnel unit allocation activated, not including supplemental units. All such personnel must be engaged in student evaluations or in providing direct services to handicapped students.

(e) If personnel are assigned to special education on less than a full-time basis, only that portion of time in which the personnel are assigned to eligible handicapped students shall be paid from special education funds.

"(m) If the state is managing conservator of a student placed in a private residential facility, the total cost of the residential placement shall be paid from state and federal funds. If the contract involves a public facility other than a program or facility administered by the Central Education Agency, the total of that portion of the contract which involves the costs of instructional and related services shall be paid from state and federal funds. If the contract involves a program or facility administered by the Central Education Agency, there is no state share paid from this program. The State Board of Education shall adopt rules governing the use of federal funds as supplemental or partial payment of the local or state share under Subsections (l) and (m) of this section." (Texas Education Code Section 16.104(m))

"(o) The salary costs of special education teacher units, other professional and paraprofessional units authorized in this section, operating costs as provided in Subsection (d)(6) of this section and state-portion contract costs as provided in Subsections (l) and (m) of this section, computed as other costs of the Foundation School Program for local fund assignment purposes, shall be paid from the Foundation School Program Fund. Provided further, that any school district may supplement any part of the comprehensive special education program it operates or participates in with funds or resources available to it from local sources, public or private. Local enrichment may take the form of but is not limited to employing personnel in excess of the state allocation or supplementing minimum salaries of any personnel employed by the district, and any district may at local expense pay for all or part of further or continuing training or education of its special education personnel." (Texas Education Code Section 16.104(o))

"(p) The legislature shall set a limit on the amount of funds that may be expended under the provisions of this section each year in the General Appropriations Act. Should the amount of funds required to fully fund the provisions of this section pursuant to the rules and regulations of the State Board of Education exceed the amount set by the legislature, the commissioner, with the approval of the board, shall make such adjustments as are necessary to reduce the total cost of the special education program to the limit set by the legislature. The commissioner may make allocations under Subsection (d)(5) of this section not to exceed $3 million a year from the sum appropriated to fund the provisions of this section. The restriction on the dollar amount available under Subsection (d)(5) of this section does not apply to any funds remaining from the sum appropriated after all other allocations are made or to the remaining balance of unexpended funds carried over from the previous fiscal year." (Texas Education Code Section 16.104(p))

"From the Foundation School Fund there shall be made available a special supplemental allowance for each blind student or for each student with a serious visual handicap and another medically diagnosed handicap of a significantly limiting nature, who is receiving special education services through any approved program whatsoever. The amount of the special supplemental allowance for each blind student or for each such multiply handicapped student shall be equivalent to the special allocation for deaf students enrolled in regional day school programs, as authorized by Paragraph (1), Subsection (s), Section 11.10 of this code. The supplemental allowances may be expended only for special services uniquely required by the nature of the student's handicap and may not be used in lieu of educational funds otherwise available under this code and through state or local appropriations." (Texas Education Code Section 11.102)

§89.254 Comprehensive Services for the Visually Handicapped.

(a) If all available resources have been used and additional educational needs which are unique because of a visual handicapping condition are identified, school districts or education service centers may apply for state funds for supplemental services for the visually handicapped. These funds may be used for students (from birth) who have not reached their 21st birthday on September 1 of the current scholastic year.

(b) Any personnel funded with state visually handicapped funds must be appropriately certified, licensed, or registered for their particular area of assignment.

"(d) In developing, administering, and coordinating the statewide plan for the education of the visually handicapped, the agency shall encourage the use of all pertinent resources, whether such resources exist in special education programs or in closely related programs operated by other public or private agencies, through encouraging the development of cooperative working relationships and by assisting in the development of contractual arrangements between local school districts and other organizations, and it shall be the duty of the agency to discourage interagency competition, overlap, and duplication in the development of specialized resources and the delivery of services." (Texas Education Code Section 11.052(d))

"While the principal cost of educating deaf children shall be borne by the state, independent school districts and all institutions of higher learning in the state are hereby authorized and encouraged to make available real or personal property or services in cooperation with the regional day school programs for the deaf for any activities related to education and betterment of education of deaf children including but not limited to research and personnel training and development. The school district in which a regional day school is located shall bear the costs of transporting students in the program who live within the district and is entitled to have those students counted in its allotment of transportation funds from the state. The regional day school program shall bear the costs of transporting children who live outside the district to the regional day school. It is the intent of the legislature in enacting this subsection that the use of all of the educational resources of this state be maximized to carry out the intent and objectives of this Act." (Texas Education Code Section 11.10(r))

"(s) Operating costs for the program in each regional day school program for the deaf shall be determined and paid on the following basis:

(1) An estimated allocation of $2,700 for each student enrolled in the program of the regional day school program for the deaf in any current year.

(2) Teachers, principals, supervisors, counselors, para-professional and supporting personnel shall be employed in such numbers as the Central Education Agency finds to be necessary to establish and operate the regional day school programs for the deaf, and such numbers shall not be less than student-professional ratios known to be requisite for success in education of deaf children. Salaries of all personnel employed in the regional day school programs for the deaf shall be determined in accordance with policies established by the State Board of Education.

(3) Local districts may receive allocations for transportation of students participating in the regional day school programs on the same basis as that provided for in Section 16.206 of this code." (Texas Education Code Section 11.10(s))

(c) Funding will be allocated based upon substantial program needs rather than on a formula. The application shall be made in a form approved by the Texas Education Agency and shall include information on students needing services, services to be provided, personnel required, budget estimates, and a program narrative. The level of funding for programs shall be negotiated based upon a review of the application, evidence that the funding requested will be expended on services which are supplemental in nature, will not be used to supplant other available resources, and the availability of funds.

(d) Applications for funds under this section shall be submitted each year at a time specified by the commissioner of education. Emergency applications and budget amendments may be submitted during the year. A final report of actual expenditures and services must be submitted at the end of the grant period.

(e) Funds allocated under this section will be included in the monthly Foundation School Program warrants. After the end of the grant period and based upon the final report, adjustments will be made in warrants to approved agencies for any unexpended funds.

"(h) A school district that provides special transportation services for eligible handicapped pupils is entitled to a state allocation. Allocations for handicapped transportation in district- or county-operated school buses shall be paid on a previous year's cost-per-mile basis. For the 1979-1980 and 1980-1981 school years, the maximum allowable per mile cost will be 80 cents. For the 1981-1982 and 1982-1983 school years and thereafter, the maximum rate per mile allowable shall be recalculated based on data gathered from the first year of each preceding biennium. Districts may use a portion of their support allocation to pay transportation costs, if necessary. The commissioner of education may grant an amount not to exceed 18 cents per mile or a maximum of $600 per pupil per year for private transportation to reimburse parents or their agents for transporting eligible handicapped pupils. For the 1981-1982 and 1982-1983 school years and thereafter, the rate per mile and the maximum allowable per pupil will be determined by the commissioner of education for consideration by the Foundation School Program Committee and the legislature in the General Appropriations Act. The mileage allowed shall be computed along the shortest public road form the pupil's home to school and back, morning and afternoon. The need for this type transportation shall be determined on an individual basis and shall be approved only in extreme hardship cases." (Texas Education Code Section 16.206(h))

"(q) It is the intent of the legislature that local resources be utilized to the fullest practicable extent in the establishment and operation of the regional day school programs for the deaf. The Central Education Agency is authorized and expected to contract with any qualified public or private organization or qualified individuals for diagnostic, evaluation and instructional services or any other services incidental to the education of deaf children, including transportation and/or maintenance.

The Central Education Agency shall employ educational and other personnel, may purchase or lease real or personal property, may accept gifts or grants of real or personal property or services from any source, public or private, including independent school districts and any institution of higher learning in this state, for the purpose of establishing and operating regional day school programs for the deaf.

(r) Except for certain transportation costs, costs of operation of the regional day school programs for the deaf shall be borne by the state and paid from the Foundation School Program Fund. Such costs shall be considered and included by the Foundation School Fund Budget Committee in estimating the needs for purposes of the Foundation School Program and the regional day school programs for the deaf. However, funds allocated to countywide schools shall remain so allocated except in those regions in which the countywide program has been made a part of the appropriate region, as aforesaid. Funds specially appropriated to the regional day school program by the General Appropriations Act of the 63rd Legislature, or any substitute therefor, shall be used so as to implement as completely as may be possible the provisions of this Act during the next biennium and in accordance with a budget of expenditures approved by the State Board of Education with the first funds, however, hereby required to be expended for staffing and planning of the regional day school program. Such funds may be used in conjunction with funds from the Foundation School Program Fund in accordance with rules and regulations adopted by the Central Education Agency, the allocation and reallocation of which is hereby authorized." (Texas Education Code Section 11.10(q)(r))

"(a) A standard school fiscal accounting system must be adopted and installed by the board of trustees of each independent school district. The accounting system must be keyed to and correlated with the classifications in the budget with respect to purposes of disbursements and sources of receipts.

(b) The accounting system must meet at least the minimum requirements prescribed by the State Board of Education and approved by the state auditor.

(c) Record must be kept of all expenditures made and all income received during the fiscal year for which a budget is adopted. A report of the disbursements and receipts for the preceding fiscal year shall be filed with the Central Education Agency on forms provided by the agency, at the time the budget for the current fiscal year is filed." (Texas Education Code Section 23.48(a)(b)(c))

"(2) The responsibility for carrying out the provisions of this subsection rests with the commissioner of education, who may allocate funds to regional service centers for the provision of support services for the functions described in this subsection.

(d) Regional Education Service Centers may provide other services to school districts under rules and regulations adopted by the State Board of Education." (Texas Education Code Section 11.33(c)(2) and (d))

§89.255 Budgeting, Accounting, and Auditing for Special Education.

All special education programs for handicapped students operated by school districts and regional education service centers shall adhere to budgeting, accounting, and auditing requirements promulgated by the agency.

§89.256 Regional Education Service Centers.

(a) Each education service center shall conduct a yearly region-wide needs assessment to determine the most appropriate role and functions for the service center in relation to special education programs in the region. In accordance with priorities established by the Texas Education Agency and needs identified by local school districts, each service center shall develop a regional special education plan. The plan shall be submitted to the Texas Education Agency for approval on or before July 1 each year.

(b) Funds shall be allocated to regional education service centers for the provision of support services for the functions described in Texas Education Code §11.33(c)(1).

(c) State funds for support staff may be allocated to regional education service centers which will serve as fiscal agents for those school districts which choose to receive such services through the education service centers.

(d) Reimbursement for travel expenses for regional education service center special education personnel may be based on individual education service center procedures but shall not exceed the current state rates for travel reimbursement.

(e) The education service center shall not charge school districts for those services for which the service center has been fully funded.

§89.257 [Reserved].

Statutory Citations

Federal

Reg. 300.708 Reallocation of local educational agency funds.

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by the local agency with State and local funds otherwise available to the local agency, the State educational agency may reallocate funds (or portions of those funds which are not required to provide special education and related services) made available to the local agency under Reg. 300.707, to other local educational agencies within the State which are not adequately providing special education and related services to all handicapped children residing in the areas served by the other local educational agencies.

(20 U.S.C. 1414(e))

Statutory Citations

Federal

Reg. 300.709 Payments to Secretary of Interior.

(a) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for that assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior.

(b) The amount of those payments for any fiscal year shall not exceed one percent of the aggregate amounts available to all States for that fiscal year under Part B of the Act.

(20 U.S.C. 1411(f)(1))

Statutory Citations

Federal

Reg. 300.710 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601(c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged three through twenty-one in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to insure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater.

(20 U.S.C. 1411(e))

REPORTS

Statutory Citations

Federal

Reg. 300.750 Annual report of children served--report requirement.

(a) The State educational agency shall report to the Secretary no later than February 1 of each year the number of handicapped children aged three through 21 residing in the State who are receiving special education and related services.

(b) The State educational agency shall submit the report on forms provided by the Secretary.

(20 U.S.C. 1411(a)(3))

Comment. It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make available a free appropriate public education. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged five through seventeen, a State might find that 14 percent (or some other percentage) of its children are handicapped. In that case, the State must make free appropriate public education available to all of those handicapped children.

[42 FR 42476, August 23, 1977, as amended at 45 FR 7551, February 4, 1980. Redesignated at 45 FR 77368, November 21, 1980.]

State

"(d) The commissioner of education shall prescribe uniform systems of forms, reports, and records necessary to secure needed information from county school officers and local school districts.

(e) The commissioner of education shall require of county judges, county and district school superintendents, county and school district treasurers or depositories, and other school officers and teachers such school reports relating to school funds and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools. He shall furnish the necessary blanks, forms, and instructions for this purpose." (Texas Education Code Section 11.52(d)(e))

Statutory Citations

Federal

Reg. 300.751 Annual report of children served--information required in the report.

(a) In its report, the State educational agency shall include a table which shows:

(1) The number of handicapped children receiving special education and related services on December 1 of that school year;

(2) The number of those handicapped children within each disability category, as defined in the definition of "handicapped children" in Reg. 300.5 of Subpart A; and

(3) The number of those handicapped children within each of the following age groups:

(i) Three through five;

(ii) Six through seventeen; and

(iii) Eighteen through twenty-one.

(b) A child must be counted as being in the age group corresponding to his or her age on the date of the count: December 1

(c) The State educational agency may not report a child under more than one disability category.

(d) If a handicapped child has more than one disability, the State educational agency shall report that child in accordance with the following procedure:

(1) A child who is both deaf and blind must be reported as "deaf-blind."

(2) A child who has more than one disability (other than a deaf-blind child) must be reported as "multihandicapped."

(20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b))

[42 FR 42476, August 23, 1977, as amended at 45 FR 7551, February 4, 1980. Redesignated at 45 FR 77368, November 21, 1980.]

Statutory Citations

Federal

Reg. 300.752 Annual report of children served--certification.

The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question.

(20 U.S.C. 1411(a)(3); 1417(b))

Statutory Citations

Federal

Reg. 300.753 Annual report of children served--criteria for counting children.

(a) The State educational agency may include handicapped children in its report who are enrolled in a school or program which is operated or supported by a public agency, and which either:

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(b) The State educational agency may not include handicapped children in its report who:

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefiting from special education;

(4) Are counted by a State agency under Section 121 of the Elementary and Secondary Education Act of 1965, as amended; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under Reg. 300.186(b) of Subpart B.

(20 U.S.C. 1411(a)(3); 1417(b))

Comment. 1. Under paragraph (a), the State may count handicapped children in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

2. "Special education," by statutory definition, must be at no cost to parents. As of September 1, 1978, under the free appropriate public education requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Office of Education expects that there would only be limited situations where special education would be clearly separate from regular education--generally, where speech therapy is the only special education required by the child. For example, the child might be in a regular program in a parochial or other private school but receiving speech therapy in a program funded by the local educational agency. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in Section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that where a handicapped child is placed in or referred to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If a State or local educational agency is responsible for serving these children, and does provide them special education and related services, they may be counted.

Statutory Citations

Federal

Reg. 300.754 Annual report of children served--other responsibilities of the State educational agency.

In addition to meeting the other requirements in this subpart, the State educational agency shall:

(a) Establish procedures to be used by local educational agencies and other educational institutions in counting the number of handicapped children receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the State educational agency to insure that the State complies with Reg. 300.750(a);

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(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this subpart; and

(e) Insure that documentation is maintained which enables the State and the Secretary to audit the accuracy of the count.

(20 U.S.C. 1411(a)(3); 1417(b))

Comment. States should note that the data required in the annual report of children served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

Education of the Handicapped Regulations
INCENTIVE GRANTS
(34 Code of Federal Regulations Part 301)

Statutory Citations

Federal

Reg. 301.1 Scope; purpose.

(a) This part applies to assistance under section 619 of the Act.

(b) The Secretary awards a grant to each State which provides special education and related services to handicapped children ages three, four, or five.

(c) The State shall use funds provided under this part to give special education and related services to handicapped children in the age groups named in paragraph (b) of this section.

(d) The terms "special education" and "related services" have the meaning defined in Reg. 300.12 and Reg. 300.13 of this chapter.

(20 U.S.C. 1419(c))

Statutory Citations

Federal

Reg. 301.2 Regulations that apply to the Incentive Grants Program.

(a) Regulations. The following regulations apply to the Incentive Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 301.

(3) The definitions in Part 300.

(b) How to use regulations; how to apply for funds. The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in--

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))
[45 FR 22533, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980.]

Statutory Citations

Federal

Reg. 301.3 Eligibility.

A State is eligible to receive a grant if:

(a) The Secretary has approved its annual program plan under Part 300 of this chapter; and

(b) The State provides special education and related services to any handicapped children aged three, four, or five.

(20 U.S.C. 1419(a))

Statutory Citations

Federal

Reg. 301.4 Application.

To receive funds under this part, a State must submit an application to the Secretary through its State educational agency.

(20 U.S.C. 1419(b))

Statutory Citations

Federal

Reg. 301.5 Application contents.

An application must include the following material:

(a) A description of the State's goals and objectives for meeting the educational needs of handicapped children ages three through five. These goals and objectives must be consistent with the State's full educational opportunity goal under Reg. 300.123 of this chapter.

(b) A description of the objectives to be supported by the grant in sufficient detail to determine what will be achieved with the grant.

(c) A description of the activities to be supported by the grant. The activities must be related to the objectives under paragraph (b) of this section and must be described in sufficient detail to determine how the grant will be used.

(d) A description of the impact the proposed activities will have on handicapped children ages three through five. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the amount of the expenditure. The application must indicate the number of children to be served and the number of handicapped children who will be benefited indirectly. If children are to be benefited indirectly, there must be a rationale that demonstrates the benefit.

(e) The number of local educational agencies or intermediate educational units, and the number and names of other agencies which will provide contractual services under the grant, the activities they will carry out, and the reasons for selecting these agencies.

(f) The dollar amounts that will be spent for each major activity described.

(g) A description of the procedures the State will use to evaluate the extent to which the activities met the objectives described under paragraph (b) of this section.

(20 U.S.C. 1419(b))

Statutory Citations

Federal

Reg. 301.6 Amount of grant.

(a) The amount of a grant is $300 multiplied by the average number of children ages three through five counted during the current school year under Regs. 300.750-300.754 of this chapter.

(b) If appropriated funds are less than enough to pay in full the grants under this part, the amount of each grant is ratably reduced.

(20 U.S.C. 1419(a), (d))

Statutory Citations

Federal

Reg. 301.7 Allowable expenditures.

(a) The State educational agency may use funds under this part to give special education and related services to handicapped children ages three through five who are not counted under Regs. 300.750-300.754 of this chapter if the State educational agency insures that those children have all of the rights afforded under Part 300 of this chapter.

(b) The State educational agency may use up to five percent of its grant for the costs of administering the funds provided under this part.

(20 U.S.C. 1419(c))

Comment. In carrying out the provisions of this part some activities are considered particularly appropriate for the use of these funds: (1) Providing parents with child development information; (2) assisting parents in understanding the special needs of their handicapped child; (3) providing parent counseling and parent training, where appropriate, to enable parents to work more effectively with their children; (4) providing essential diagnosis and assessment; (5) providing transportation essential to the delivery of services; (6) providing speech therapy, occupational therapy, or physical therapy.

Statutory Citations

Federal

Reg. 301.8 Excess Costs.

(a) If local or State funds are available to pay for the education of non-handicapped children of the same age as the handicapped children served with funds under this part, funds equal to that amount must also be made available for these handicapped children.

(b) If no local or State funds are available for non-handicapped children of the same age, funds under this part may be used to pay for all of the costs directly attributable to the education of the handicapped children.

(20 U.S.C. 1419(c))

Statutory Citation

"(3) Developmentally delayed child means a child who exhibits:

(a) a significant delay, beyond acceptable variations in normal development, in one or more of the following areas:

(i) cognitive;

(ii) gross or fine motor;

(iii) language or speech;

(iv) social or emotional;

(v) self-help skills; or

(b) an organic defect or condition that is likely to result in such a delay." (Vernon's Texas Civil Statutes Article 4413 (43a), Section 1(3))

"A developmentally delayed child is eligible for services under sections 11 through 13 and 16 of this article if the child is under three years of age, or until reaching the age of eligibility for entry into the comprehensive special education program for handicapped children under Section 16.104 of the Texas Education Code." (Vernon's Texas Civil Statutes Article 4413 (43a), Section 10.)

§89.258. Early Childhood Intervention Program for Developmentally Delayed Children.

Rule

(a) Eligibility. Children under three years of age who are identified as developmentally delayed as defined in Texas Civil Statutes, Article 4413 (43a), §1(3) may be served by early childhood intervention programs established in accordance with Texas Civil Statutes, Article 4413 (43a), §§1-21 and this subchapter.

(b) Identification, referral, and assessment.

(1) Children who may qualify for services under this section may be referred to the local school district if the district operates an approved program under 25 TAC Chapter 621 (relating to Early Childhood Intervention Program). This program is voluntary. No school district is required by law or by rules of the State Board of Education to offer a program of early childhood intervention for developmentally delayed children. This program is also voluntary on the part of parents.

(2) The local district shall designate a case manager for each child referred.

"(g) The service provider may charge a fee for intervention services, based on the parent's ability to pay, to be used to offset the cost of providing or securing the service. A determination of the parent's ability to pay must include a consideration of the availability of financial assistance or other benefits for which the child may be eligible. If a fee is charged, a separate charge shall be made for each type of service." (Texas Education Code §11.092(g))

(3) Children referred to a local district which has an early childhood intervention program shall be given a comprehensive assessment in accordance with §89.213 of this title (relating to Individual Assessment). Any deviations from the standard assessment procedures which may be necessary because of the age of the child must be explained and documented as required by §89.213(b)(3)(D) of this title (relating to Individual Assessment). The case manager shall meet with the parent of each child referred, explain the assessment process, and obtain information needed for the assessment. A child under the age of three who has been found through assessment procedures to be developmentally delayed, as defined in Texas Civil Statutes, Article 4413 (43a), §1(3), shall be served in accordance with the requirements in this subchapter.

(4) Appropriate procedural safeguards shall be observed in accordance with §89.277 of this title (relating to Procedural Safeguards).

(c) Individual developmental plan. The individual developmental plan (IDP) for developmentally delayed children shall be developed in accordance with §89.214 of this title (relating to Individual Educational Plan Development). In addition, the plan shall include a list of all service needs of the child other than education and related services as prescribed (for example, medical services or day care) and a designation of the person responsible for locating and obtaining the service. The parent may be the person so designated.

(d) Curriculum. The curriculum for a developmentally delayed child shall be based on a specified set of developmentally sequenced skills. The activities and curriculum objectives shall be consistent with the goals and objectives specified in the child's individual developmental plan (IDP).

(e) Instructional settings. The interdisciplinary team established in accordance with 25 TAC §621.23 (relating to General Requirements) shall determine the most appropriate placement and amount of instructional time for each developmentally delayed child. Types of instructional settings are as follows:

(1) Home-based instruction. Home-based instruction is the provision of services in the home of the client. Both parent training and infant instruction shall be provided. When direct care of the infant is given by someone other than the natural parent, the direct care provider shall also receive training.

(2) Center-based instruction. Center-based instruction is the provision of services to children and their families in a facility such as a school, rehabilitation center, clinic, or day care center. If circumstances are such that the infant must remain out of the home for longer than the instructional time specified in the IDP, the center shall assist the family in locating appropriate day care services or the center may provide a separate day care service, for which a fee may be charged as provided in Subsection (h) of this section.

(3) Combination program. In a combination program, children and families receive services both in their home and in a service facility. The types of services and where they are to be provided shall be determined by the interdisciplinary team.

(f) Staff-child ratios. The developmental level of handicapping condition, instructional setting, and nature of service to be provided as addressed in the individual developmental plan (IDP) shall be the criteria for determining the appropriate staff-child ratio.

(g) Staff composition and qualifications. Each program shall have staff whose professional training is appropriate to the assignment.

(h) In accordance with Texas Education Code §11.092(g), fees may be charged for services provided under this section. Fees shall be based on the parent's ability to pay, including consideration of other benefits for which the child may be eligible.

Source: The provisions of this §89.258 adopted April 1982 to be effective May 18, 1982, 7 Tex Reg 1742.

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COMPLIANCE STATEMENT

TITLE VI, CIVIL RIGHTS ACT OF 1964; THE MODIFIED COURT ORDER, CIVIL ACTION 5281, FEDERAL DISTRICT COURT, EASTERN DISTRICT OF TEXAS, TYLER DIVISION

Reviews of local education agencies pertaining to compliance with Title VI Civil Rights Act of 1964 and with specific requirements of the Modified Court Order, Civil Action No. 5281, Federal District Court, Eastern District of Texas, Tyler Division are conducted periodically by staff representatives of the Texas Education Agency. These reviews cover at least the following policies and practices:

(1) acceptance policies on student transfers from other school districts;
(2) operation of school bus routes or runs on a non-segregated basis;
(3) nondiscrimination in extracurricular activities and the use of school facilities;
(4) nondiscriminatory practices in the hiring, assigning, promoting, paying, demoting, reassigning, or dismissing of faculty and staff members who work with children;
(5) enrollment and assignment of students without discrimination on the basis of race, color, or national origin;
(6) nondiscriminatory practices relating to the use of a student's first language; and
(7) evidence of published procedures for hearing complaints and grievances.

In addition to conducting reviews, the Texas Education Agency staff representatives check complaints of discrimination made by a citizen or citizens residing in a school district where it is alleged discriminatory practices have occurred or are occurring.

Where a violation of Title VI of the Civil Rights Act is found, the findings are reported to the Office for Civil Rights, Department of Health, Education and Welfare.

If there is a direct violation of the Court Order in Civil Action No. 5281 that cannot be cleared through negotiation, the sanctions required by the Court Order are applied.

TITLE VII, CIVIL RIGHTS ACT OF 1964; EXECUTIVE ORDERS 11246 AND 11375; TITLE IX, 1973 EDUCATION AMENDMENTS; REHABILITATION ACT OF 1973 AS AMENDED; 1974 AMENDMENTS TO THE WAGE-HOUR LAW EXPANDING THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; AND VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1972 AS AMENDED IN 1974.

It is the policy of the Texas Education Agency to comply fully with the nondiscrimination provisions of all federal and state laws and regulations by assuring that no person shall be excluded from consideration for recruitment, selection, appointment, training, promotion, retention, or any other personnel action, or be denied any benefits or participation in any programs or activities which it operates on the grounds of race, religion, color, national origin, sex, handicap, age, or veteran status (except where age, sex, or handicap constitute a bona fide occupational qualification necessary to proper and efficient administration). The Texas Education Agency makes positive efforts to employ and advance in employment all protected groups.